

Hindu Code Bill (Clause by Clause Discussion)

HINDU CODE—contd.

SECTION - B

Shri Bhatt : I was going through census figures and my friend Shri Sidhva and others may pardon me, when I say that I found from the census that many men marry at the age of 60 even. I, for one, do not want to marry.

I was saying that compulsion cannot be used in regard to our way of life. One's way of life should be according to one's own temperament. It will come about after some time, if not today. I am sure that Panditji, in whatever he does, will have the country's interest before him ; that is why we consider him as our leader. We would not consider him as our leader if we did not have any faith in him. In the same way we believe that whatever our parents will do, will be all right for us. If we do not have any faith in them we will ourselves seek our mates but then we shall take into account our nature, habits and convenience. Our faith is based on these things and we should not make any such law as my create difficulties for the society, or spread discontent. After all, the object of every legislation is to make society happy and prosperous. But if people think that a certain legislation brings them disaster, bring them round to your point of view. If Dr. Ambedkar is so particular about this Bill let him address a meeting of a lakh of people and explain to them the benefits that will accrue from it. At the same time a *pandit*, an opponent of the Bill, should also put forward his point of view. If those one lakh people were to express their views by means of a secret ballot, may be that would satisfy you.

Shri Naziruddin Ahmad: That will be the end.

Shri Syamnandan Sahaya: Take a secret ballot in this very House and it will be the end.

Shri Bhatt : You are afraid and that is why you do not put it before the people. There was only one person, and that was Gandhiji who believed in putting everything before the people. He thought that untouchability should be abolished. The capitalists threatened to boycott him. When Gandhiji went to the Mulji Jetha Market of Bombay to collect money for the Tilak Swarajya Fund and asked for a crore of rupees for that fund, the capitalists said that they would give not one but five crores, only if Mahatmaji expunged the abolition of untouchability from his programme. Mahatmaji replied that on that condition he did not want even a single pie from them, not to say of five crores of rupees. He said that he would stand by his principles and march forward towards *Swarajya*. It is the duty of the Government to go to the people. We are ordinary men, have not studied the *Shastras* to any great extent. You have wisdom, go to the *Pandits*, to the Shankaracharya, who is

opposing it, go to those women who are against it and whom you want to make happy and try to persuade them. I don't think that this Bill is going to benefit only the women. I do not consider this to be a Magna Charta for women only. You are trying to benefit the whole of the society and I thank you for that. You should bear this in mind that the subject under discussion is not new. Not to talk of 1942, in 1937 Dr. Deshmukh had introduced a Bill which brought this matter to the foreground. In 1856 Shri Ishwar Chandra Vidyasagar and Raja Ram Mohan Roy brought about reforms like widow remarriage. These things have been going on. Authorities and commentators of our religious scriptures have written different things about the subject. I don't ask you not to pass this legislation. But why are you doing it today? Why are you so impatient?

Please be good enough to wait for some time. General Elections are imminent and the new House will meet in May next year. At that time you may bring forward the best of legislations and pass it. Some of the present Members may again be elected and if I again sit in this House I will take part in the deliberations. But before that put the final draft of the Bill before the people and do not have an incomplete legislation and say—"Gokul Bhai, please get it passed". I do not want this. Give me something wholesome to eat. If you give me something dirty to eat or say that I should eat controlled rice, because nothing better is available. I won't have it. I will have something good to eat. It is another thing that hunger may compel me but if there is an alternative food I will prefer that. I would rather eat leaves of trees than eat anything dirty. So I request you to postpone this Bill. You have accommodated us to some extent and I want to thank you for that. I congratulate you on your sagacity because you have met the demands of time. But be more liberal and go a step forward. I would also ask my sisters what good would accrue to them if it is passed just now and how they would come to harm if it is delayed by four months. The skies would not fall, nobody would come to harm nor is there any question of monetary advantage if it is passed. That is why I am making this request.

I again refer to the talk I had with some people in a factory. They want the question of divorce to be settled according to custom. But what are Customs? Customs have a great influence, even Dr. Ambedkar won't deny this. What I am opposed to is that you want to do away with our customs. That will not work at least for some years to come. If you want to take the backward classes with you, you will have to slow down your pace. Only in that case shall we follow you. Mahatmaji was very progressive. When Shri M. N. Roy came to the Faizpur Congress and began discussing Communism with Mahatmaji, he (Mahatmaji) said, I was not there. I am telling you what I came to know about their conversation—"Mr. Roy, say whatever you want to say in the strongest possible words about present day society and capitalists". Mr. Roy made a strong and lengthy speech. Then Mahatmaji said, "Is that all?"

And after that Mahatmaji replied in a few words, which took only some minutes. Mr. Roy was surprised and asked if Mahatmaji felt that way. Mahatmaji said— " You don't know me well enough. I shall put forward my ideas, as our society makes progress. I know our society is backward and many ideas have not developed to the extent to which they should have. But I have to carry the people along with me. " That is why I say, however high the ideas and whatever happiness they might bring, what are you Dr. Ambedkar going to achieve with 15, 20 or 25 members of the Cabinet, if we are not with you. I see that many people belonging to the majority accept certain thing because Shri Nehru or Dr. Ambedkar has asked them to do so, but if I do it, who will follow me ? I repeat that I will be deceiving you if I did not tell you that people do not want it in this way. I don't want to deceive you. As we are your followers so are our electorate with us. We have to see to their good and convenience. It has been said, as you know, " *Shastra rurhi baliyasi* " i.e., custom overrides the *Shastras*. After all, laws are made by men, so were the *Shastras*. When our customs have claims of precedence over *Shastras*., why can't our society override our laws ? I ask you to take this into consideration.

There is one more drawback which I would like to point out. Shri Kunzru is not in his seat, I would ask Dr. Ambedkar to excuse me. We have become so thoughtless that when the westerners say that our marriage laws and ceremonies are very good, we will agree with them. " When Max Muller says that our *Shastras*, *upanishads* and *vedas* are the best in the world, we take that to be true and quote him. But our own commentators and authorities have said the same things in a better way, yet nobody cares to go through their writings.

I have been just now told the copies of ' *Yagnavalkya Smriti* ' could not be available in the whole of Delhi city even on payment.

Dr. Ambedkar: I have got so many copies with me.

Shri Bhatt: If you have got the copies please lend them to us ; they are not to be found in the Library. *Sanskar Kaustubaand Yagnavalkya Smriti* could not be found in the Library. You have got all these things, you might have personally purchased them; you are thirsty after knowledge and a lover of learning; not only that, you are a learned scholar and a *Pandit* as well. But please place those copies in the library for some time so that we too may have change to benefit ourselves by those books, and may be able to have the necessary information. I have never been impressed with the translation of *Gitanjali* done by Yeats, because it has always been my endeavour, and I had made up my mind in this connection when I was at College, not to read Rabindra Nath's *Gitanjali* until I had learnt Bengali. I have always held that it is useless to read such a work without having the knowledge of the language in which it was originally written. I have not been able to learn Tamil so far, but I would try to learn it, such has been my tendency from my early days. When I saw *Gitanjali* in original and its translation by Keats. I found a lot of

difference. The translation did not contain anything worthwhile. Compared to it the translations in vernacular languages are much better. I have seen a more beautiful translation in Marathi done in *Abhanga* metre by some person under a pseudonym. But unfortunately we Indians generally close our eyes to those things, which are our own, and when somebody from outside throw light on them we exclaim ' Yes now we have seen '. I would like to ask after all what flood lights are opened before our eyes by the foreigners which dazzle our eyes and we begin to appreciate those things ? After all what are the defects in our own lights ? What do you think is missing in the lights that we have ? We should try to understand our own things in the right prospective and after a full realisation should gladly make the necessary changes in them so that everybody may be satisfied and it may be in the interests of all.

Now, I come to the point as to what a Hindu really means and where from has this word ' Hindu ' come ? Sir, you would excuse me if I would take a few minutes more to throw light on this. My submission is that I do not like to go into the historical facts nor do I want to go into Greek and Iranian histories. Neither do I want to go into the details as to what relations we had with Iran and Greece in the past ; but I would only make an attempt as to where from has this word ' Hindu ' come. My amendment wholly relates to this very thing. One opinion about the origin of the word ' Hindu ' is that there were two cities in *Gandharva* Desh, one of them was known by ' Hindus ' from which the word ' Hindu ' has been derived. The second opinion is that the word ' Hindu ' is derived from the word ' Sindhu ' the great river that we had according to Philology letter ' S ' has changed into letter ' H ' and in this way the word ' Sindhu ' changed in to the word ' Hindu '. The word *Hinduani* occurs at several places. It is difficult to ascertain the source of this word. I visited Central Secretariat Library but found it to be too poor. I have never seen a poorer library than this one. I asked for books related to this matter but I was told that they had no special collections on this subject, further adding that only some articles might have appeared in annual numbers of certain magazines here and there on this subject. That was all and there was nothing more in that Library. As against this, had I gone to the Royal Asiatic Society I could have definitely got some better and useful material, but, unfortunately. I did not find time to go there. Sometimes the Press Bill and sometimes this Hindu Code Bill and other things detained me here. Anyhow, I do not go into the details as to where from has this word ' Hindu ' come and what its origin actually is. But one thing need be kept in view that the word ' Hindu ' means the people who inhabit this land of Hindu *i.e.*, the whole of Bharat. All the people living in this land are Hindus, whether you call them by the name *Arya* or *Dasyu*. There were only two classes of people inhabiting India in the past ; one was known as *Arya* and the other as *Dasyu*, but in spite of this distinction of them were ' Hindus '. Hence, I would like to know what meaning should be attached to the word ' Hindu ' in the Bill which is going to

be passed into an Act now. After all how many persons have been consulted as has been mentioned in the report and as was stated by Shri Kunzru ? How many persons have given their opinions and how many of them have been included in it? But I do not want to bring in all those things.

Dr. Bhagwan Das, while discussing the Marriage Validity Act, explained as to who was a Hindu. He said that Hindu was not merely a nationality. When ' *Shariat* ' Act was introduced in the House most probably in the year 1937, his *sufi* friend gave the definition of a Musalman which I read out here. While introducing the Bill in the course of his speech he said:

" Islam has scores of sects but the belief in Mohammed seems necessary for all, though I am told that some sects do not consider the second *part of Kalema* of faith as essential and indispensable and regard Mohammed as one of the many prophets sent by God to help humanity on earth."

While replying that point and repudiating that view Sir Yamin Khan (Agra Division) said:

" There is no Muslim who believes in this. It is essential for a Muslim to believe in both the parts of the *Kalema*, namely ' *La ilaha illallah* ' and "*Mohammed Rasulullah* ".

To this Dr. Bhagwan Das remarked " I have heard it from a *Sufi* friend ". In reply Mr. Yamin Khan said : " Those who do not believe in the second part cannot be called Muslims."

In this way what I beg to submit is that I have suggested in my amendment that those persons, who have left Hindu religion and embraced any other faith but whose social customs are still like those of the Hindu Society, should be given the privilege to have this Hindu Code applied to them if they so desire. When Hindus are going to benefit by this Code why don't you allow others too to have its benefits? After all what objection have you got to that? There are some Indian Christians whose social customs are like those of the Hindus notwithstanding that they have embraced Christianity. As such why do you exclude them from its application, and why don't you allow them to have the benefits of the Code in the same manner as the Hindus would have?

I, therefore, request the Hon. Doctor to keep all these things in view. Should I state which of the non-Hindu communities can benefit by it? I do not want to go into detail, but I certainly want to draw his attention to it. Take for instance. Dr. Gour and Mr. Gupta who are great authorities on Hindu Law. They have given the names of those non-Hindu communities to whom this Code can apply. About Kutchi Memons.....

Shri Syamnandan Sahaya : You know it, he too knows it, but we do not know it. Kindly read them out.

Dr. Ambedkar : Do not be brief. But please read them out.

Shri Bhatt : The Memon Act which has been framed.....

Dr. Ambedkar : Do not mind about the time, but please read them out.

Shri Bhatt : I am going to read it out. It is laid down in the Kutchi Memon

Act:

" Whereas it is expedient to enable those Kutchi Memons who so desye to be governed in matters of succession and inheritance by the Mohmmedan law, it is hereby enacted". The operative section is :

" Any Kutchi Memon who has attained the age of majority and is resident in British India may by declaration in the prescribed form and filed before the prescribed authority, declare that he desires to obtain the benefit of the Act, and thereafter the declarant and all his minor children and the descendants shall, in all matters of succession and inheritance, be governed by Mohammedan law."

Shri Syamnandan Sahaya: It is an optional clause. So there is a precedent.

Shri Bhatt: So I hope the Hon. Minister of Law would keep some sort of provision in it in the same manner in which some laxity has been allowed in the above clause, otherwise you are only limiting its scope. The then Home Member Mr. Henry Craik made a mention of it in his speech and said:

" I think it deserves very careful consideration, whether it is not wise in those matters to give the individual the option and not to compel him to accept a rule or law of which he may be imperfectly informed."

Shri B. Das (Orissa) : I think Sir Henry Craik was a bachelor—he did not understand society.

Shri Bhatt: I have taken this from the Debates of 1937 where it is given on page No. 2544 of Volume No 3. Hence, my submission is that we too should keep a provision of this nature in it. Look into the Baroda Act which all of us appreciate. Baroda is several years ahead of us, ask them now where they are at present. Ask them what facilities they enjoy and from what difficulties they suffer, and how they enforce their various laws. They might perhaps admit that the old days were by far better. I do not say all that with any special motive. I hold that so far as social laws are concerned Mysore is ahead of all other parts of India. And if I am not wrong—Mysore friends would excuse me— Sir Sayaji Rao Gaikwad was the first to introduce Educational and Health reforms long before Mysore and other stepped in.

Dr. Ambedkar : He did a blunder :

Shri Bhatt : You want to take us, the people of Rajasthan, on to progress. We find that we are a tardy people and go slow. Our speed is that of a camel which cannot go along with the speed of your aeroplane. So it is good to slow down the speed of your aeroplane. The Baroda Hindu Code also lays down:

"This Act shall apply to all persons domiciled in the Baroda State.

(a) who are Hindus by birth or by conversion to Hinduism or to whom any part of this Act is made applicable by this Act, to the extent to which it is so applicable.

Explanation 1. The people to whom the Hindu law or any part thereof is applicable by custom and usage shall be deemed to be Hindus....."

Shri Syamnandan Sahaya: Which Code is this?

Shri Bhatt : The Baroda Hindu Code.

Shri Syamnandan Sahaya : Monogamy Act.

Shri Bhatt : Yes. It lays down :

" The people to whom the Hindu law or any part thereof is applicable by custom and usage shall be deemed to be Hindus for the purposes of this Act in so far as the matters in respect of which the Hindu law or any part thereof is so applicable or concerned ". You have been saying that whomsoever would it apply to would be considered a Hindu whether he professes the Hindu religion or not. But I say all the people who live in India are Hindus. I do not say so from the cultural point of view alone. I am saying it from the English point of view as well. After all why are we called Indians or *Hindustanis*? As a matter of fact the word ' Hindu ' refers to the man who is born in a particular territory and certainly not to his religion. And because it refers to the man born in a particular area rather than to the Hindu faith, it means that it covers all the people who inhabit that land. See the following:

" (b) who have not renounced following the Hindu Law shall be deemed to be Hindus ".

This is the thing and so I request the Hon. Minister to accept my amendment. Now I come to the portion, which is not still covered.

Shri J. R. Kapoor: Which of the amendments do you support specially?

Shri Bhatt : I support my amendment *i.e.* " Those who want to be governed ". This covers everything that I want.

I would like to draw your attention to one thing more. Our Hon. Shri Gadgil and Pandit Kunzru too have dwelt upon this point. When Sarda Act, *i.e.* the Child Marriage Restraint Act was introduced in 1928, originally its title was the ' Hindu Child Marriage ' Bill. But in 1929 when the report of the Committee was received, some alterations were made in it and its name was changed to " Child Marriage Restraint Bill ". You know there were some Muslim members as well on that Committee. They opposed it. When it was discussed in the House in the year 1929 they again opposed it, but in spite of their opposition it was thought desirable to enforce it throughout the country, as it was a good legislative measure. With the exception of Mr. Jinnah all the Muslim Members opposed its application to Muslims and said that their divines were opposed to it and as such it should not be applied to them.

If I remember well there was a Christian member, Mr. Chatterji, of the House in those days. He too pointed out that it went against their religion and as such it should not be applied to them. There were speeches of this nature. But in spite of all that opposition the Government applied it to all sections of the population because it was, in fact, good measure. My submission is that if monogamy is really a good thing why don't you impose this restraint on all sections of the population and why do you leave out some people from its purview. May be some Muslim friends are having two wives—there are very

few such cases in Hindu society. Generally it has been seen that people from lower classes alone keep two wives but they keep them only to help them in their occupations. Broadly speaking, the majority of Hindus are monogamous either by nature or by circumstances. It is difficult to get even one wife, wherefrom can one get two ? At that time it was stated in the Select Committee Report that:

" The object of the Bill, as introduced in the Legislature, was to impose restraint upon the solemnisation of child marriages and the method adopted was, broadly speaking, that of declaring all marriages of boys and girls below a certain age to be invalid."

I would like to draw your attention to the fact that the aim and object of the Sarda Act was ' to declare the marriage to be invalid '. But afterwards it was altered. And why was it altered? It was done because it would have been very strict. You have to keep this thing in view. I would speak about monogamy when I would come to it. After making alterations it was laid down:

" The Bill has been circulated under the orders of the Government and has elicited a strong expression of feeling that it is objectionable both on religious and on legal grounds of interfere with the validity of a marriage which has been performed.

In our opinion, these objections are at present insuperable and we have accordingly acted upon a suggestion which has been widely made that the Bill should effect its purpose of restraining child marriages not by declaring such marriages to be invalid but by imposing punishments upon those who participate in them."

You would see what a difference it has made. The things that were formerly contemplated to be rejected, were not rejected. Those marriages were not made invalid. But some punishments were imposed on them. Further it was laid down that :

"The Bill, as introduced applied to Hindus, Jains, Sikhs, Brahmos, Arya Samajists and Buddhists and was a measure relating to the validity of marriage. As we propose to amend the Bill by making it a measure imposing criminal penalties on participants in a child marriage, it seems invidious that it should be restricted to those particular communities, since child marriages do occur, though not so frequently, in other communities. We propose, therefore, that the amended Bill should be general in its scope and apply to all classes and communities in British India."

This was a marked departure. They did it after fully appreciating the trend of the public mind and so the Hon. Minister of Law should also go ahead after taking into view the trend of the society. This is my only request.

See what is laid down about the Indian Christians in the Christian Marriage Act. See what is laid down in the Parsi Act regarding the *bona fides* of the Parsees. This is a very limited definition. A Parsi is he who professes Zoroastrianism. There are several cults here in this country and people follow

someone or the other. That is why I submit that all the people should be considered as 'Hindus'.

The Sarda Act has not been applied to Part B States so far. According to the amendment of 1950, the subject is in the Concurrent List and can be applied to any State. You can apply anything you like to those States as well. But in spite of that provision being there this Act has not been enforced in Part B States so far.

Shri B. Das: I hope Dr. Ambedkar takes note of this.

Dr. Ambedkar: All that would be cancelled.

Shri Bhatt: So I was speaking to the Hon. Minister of Law about divorce. I respectfully want to submit that he should allow a law to continue so long as it does not go against the social customs. And for those persons who favour these reforms, provision for Civil Marriage is already there.

Dr. Ambedkar: For them too the door should be closed.

Shri Bhatt: Do not close the door for those for whom it is open, notwithstanding whether they come from the door or from the window. But allow the various customs to prevail in the various sections of the population, at least in those sections of the Hindu population who are backward in education and in other respects. Our Hon. Minister of Law has not made a tour to peep into the actual working of the Hindu society. Please have such a tour and contact the people, show them your books and convince them about what you have brought for them. A real thing can never lose its reality, just as gold can never turn into a stone ; it can only become refined gold. So please allow gold to become more refined and let them have time to understand what divorce actually means. Do not give rise to a dispute here. Those who favour such reforms are at liberty to make use of the Civil Marriage Act, and have the facility of divorce under that Act. You ask how those people, who are not married under the Civil Marriage Act, can have the benefit of divorce. I give you a suggestion in order to find out a way for them. Allow them to get their marriages registered under the Civil Marriages Act so that they may also have the benefit of having divorce, if they so desire. In this way they can have a wider door open for the fulfilment of their wishes.

Shri R. C. Upadhyaya : What do you suggest if the husband favours it and the wife does not ?

Shri Bhatt: The wife listens to the words of her husband. She still considers her husband " God ' at home, notwithstanding the fact that she may be an educated one. But that does not mean that Hindus consider their wives as their serfs. She is the mistress of the house and a *Devi*. These are the words, which are used for her. I do not believe that Hindu society is so degenerated as to consider its womenfolk as serfs. If anybody has any such impression, he should wash it off. I say even in those sects which are called backward, women are mistresses of their homes and their men do only what they direct them to do. In Rajasthan and other places there are several social customs,

which are included in the Shastra, and that *Shastra* is known as the *Doshi Shastra*. People do every thing in the manner in which the old ladies advise them to do. If a *pandit* makes a mistake while performing a sacramental marriage ceremony, it is at once pointed out with the help of songs as to where he has committed mistake. If there would be any mistake in the *Sapt padi* etc. we at once come to know with the help of the songs as to where the mistake has actually occurred. In this way, all those customs go on with the help of the songs not be presumed that women are not honoured in Hindu society.

A drunkard might be a good man, a great man or an educated man but in spite of all that he is a drunkard. It only intoxicates a man, what else can be the effect of the drink. Whether a drunkard is from a backward class or from a higher class he or she is nothing more than a silly person.

Shri R. C. Upadhyaya : What should be done for them ?

Shri Bhatt : Only the next day that intoxication would go by itself and everything would be all right. You do not know that that becomes their habit. All of us have a number of habits good and bad, and so far as intoxication is concerned I have come across a number of people who take two or three bottles of whisky at a time and still do not subject themselves to intoxication. The Hon. Doctor might be remembering that there used to be a number of persons in the Bombay Bar Council who could not argue their case in the courts unless they had taken one or two pegs.

Mr. Chairman : May I know on which provision of clause 2 the hon. Member is speaking ?

Dr. Ambedkar : We are discussing Evacuee Property Bill.

Shri Bhatt: Sir, I should be excused, there has been a little digression. But I would like to remind you that some of my friends talked about it. What I was submitting was that nobody stated that you were only bringing any deterioration or improvement in the Bill by keeping or not keeping any provision of monogamy in it. What is the necessity of imposing legal restraints on it? If you are bent upon imposing them we would have no objection, but then please impose it on all sections of the population of the country, because the Muslims too then would not feel about it. They too would agree that it is a good thing and that as such it should be applied to them as well. As Sarda Act has been applied to one and all, similarly its application too should be extended to all sections of the population. So far as divorce is concerned it is already prevalent in the Muslim community. Hence my request is that whatever legislation you like to make, it should be applied to one and all. Nobody should be excluded from its application, it should apply to Indians generally.

I admit that you have come up to appreciate us and to accommodate our viewpoint. You have become so much accommodating now that you have realised the position. And now if you do not want to do anything, at least

please do one thing. Take out the marriage and divorce clauses from the original Bill, pass them as a separate law and make it applicable to all the Indians. If you would do that everybody would be happy over it, would praise you and would say that you have really done a brave deed. All opposition would go automatically; it would vanish and people would say that the Government have taken the right step which gives them the maximum satisfaction. Although that would not be complete satisfaction, yet that would be the maximum under the present circumstances. So please adopt this course after taking into consideration the present day situation. When you would proceed to do it, you would come to know what more should it contain and what more improvements you ought to bring in it. (*Interruption*). Hence I request you to look towards them as well so that you may come to know where exactly the shoe pinches. The wearer knows where the shoe pinches. At that time you would come to know that the opposition is very strong. Several sister would come here, would entreat you and then you would come to know about the real position. Several other people too would come here and you would come to know the extent to which this measure would be opposed. But I say do not mind the opposition from whatever quarter it may come. Wait for sometime and then as the Sarda Act was passed by the Government without caring for any opposition, similarly pass a law which may apply to one and all. There is no question of time in it. Prepare a new draft Bill and when we meet in February next, put it before the House.

Shri Syamnandan Sahaya : It would be the month of *Phagun*. I think that would be the opportune time.

Shri Bhatt : Yes, it would be the month of *Phagun*. But whatever month it may be I most humbly put forth my suggestion. I do not say all this simply by way of a joke. It would certainly benefit the whole of India. Why do you benefit a few selected Hindus only, benefit the whole nation. Send your invitation to all and make this law a perfect one.

With these words, Sir, I request the Hon. Minister to think over my suggestions. Last of all I appeal to you that this is not the opportune time to go ahead with this legislation. Stop there, it would bring no harm to the country, it would only bring cheers to the Government. Sir, I have certainly taken much of your time, but I did not make an effort to prolong my speech in any way. I would request the Hon. Minister who is the representative of the Government here, to consider our humble but plain request so that it might bring glory to our Government.

Sardar B. S. Man: Sir, I thank you very much for calling me to explain my position.

I have moved an amendment that the Sikhs be absolved from the operation of this Bill and that the Sikh community be not brought into the (315 PSD) orbit of this Bill. I would have very much liked to have moved an amendment not embracing simply our community in terms of Sikhs, or Hindus or Muslims ;

but looking at the main clause as it has been framed, I was forced to use this word. I would have very much preferred to have used a territorial term saying that the *Punjabis* be absolved, or certain agricultural classes be absolved. But, since the framers of the Bill themselves have used the word Hindu, Jain, Buddhist and Sikh, I have moved an amendment in these terms. In fact, I have an amendment to clause I that the operation of the Bill be not extended to Punjab and P.E.P.S.U. I base my arguments not on narrow communal or religious grounds. I shall come to that later. I do not minimise the fact that this attempt to bring the Sikhs under the domain of Hindu Law will savour of bad political communal taste.

1 P.M.

The other day, the learned Doctor cited a case to show that the Sikhs have all along been governed by the Hindu Law. With all apologies to him, I may point out that the law that he has cited was confined to the non-agriculturist properties. The Sikhs mainly comprise agriculturists. In fact the agriculturist Sikhs comprise 95 per cent. of the Sikh community. When you have to discern clearly and generalise in this way as to what law applies to them, you have not got to see that commercial classes of the Sikhs, the *khatris* Sikhs or other Sikhs who are resident in the cities, but you have got to look to the main community, the agriculturist Sikhs and see what their laws is. And I can cite not one, but innumerable cases. I can cite case after case to prove that in the Punjab the agricultural Sikh, along with other agricultural classes were all along governed by a secular law—and here incidentally it was an advance far ahead of what is proposed in this Hindu Code. So, I say we are there absolutely governed by a secular law. There we have got a uniform law for the agricultural population who form the bulk of the population. We should not look at the law governing the microscopic minority of the people. We have to look at the law that prevails among the main bulk of the population, the main bulk which in this case forms about 95 per cent. of the population there. There, as I have said, we have an advanced law, that whether he be a Muslim or a Hindu or a Sikh, we are governed so far as succession to property is concerned, by one common law, and that is the customary law. But here you are bringing forward this Hindu Code and so I confront you with the statement that we have got one common, uniform law which cuts across all communities and all narrow communalism in the Punjab. But by this measure you are trying to introduce for the first time communalism in the Punjab. (*Interruption*). Yes. The customs are there and they are due to the long usages which have been recognised. Various attempts have been made to over-ride customs ; but all this is bad and it will be a bad policy and quite definitely an ill-advised policy, to promulgate laws from the top and then within these fifteen days change the entire structure of society there which has come through for a very long time and which has imbibed in itself the wisdom

of the ages and the spirit of the time. I am not saying that because a particular law has been laid down by a particular old *Brahmin* and so it cannot be *touched* or changed. I am not basing my argument upon that sort of sanctity. I only say that the custom has come down to us and it has developed, due to the lack of rigidity it has imbibed into itself certain practical usages, usages very useful to the genius of the people there. I will come to this part later on. Here I only refer to it to say that custom over-rides the written text. The custom in the Punjab has been there and is still the law there.

Apart from that, I shall prove also that my customs are far more advanced than this retrograde step that is now being proposed. They are much more advanced in many respects.

I ask that the Sikhs be absolved from this Bill, for this reason also. It will surprise hon. Members, as it has surprised me, that all along, since the introduction of the Hindu Code Bill in this House by Mr. Mandal— in fact though Dr. Ambedkar is trying to improve upon that Bill, nevertheless he is carrying Mandal's baby—since the introduction of the Bill up to now, there has not been a single Sikh Member on the Select Committee.

Dr. Ambedkar: Giani Gurmukh Singh ?

Sardar B. S. Man: No. No Sikh opinion has ever been consulted on this vital question. Nor has there been appreciable agitation among the Sikhs because we were told that the agricultural property will be an exception under this Hindu Code Bill and this led to a sort of indifference among the Sikh community towards this Bill, 95 per cent. of the population thought that this Hindu Code Bill was not going to touch them in a vital way.

Shri A. C. Shukla : Have the Sikhs passed any resolution against the Code in any of their conferences ?

Sardar B. S. Man: I can speak for the Sikhs much better than the hon. Member. There are a few ladies here and on such a vital matter as this they are consulted and listened to and their advice is accepted. But in this House we are seven Members of the Sikh community and I challenge the hon. Member to produce a single Member of the Sikh community who is in favour of this Bill completely and totally?

Shri A. C. Shukla : What about those outside the House ?

Sardar B. S. Man: Again and again on the floor of this House, speaker after speaker has pleaded, let us not proceed with the majority of the Members here. Let us conduct a referendum of the people outside. If that is what you want, let it be referred to a referendum of the Sikh community. Till then it should not be passed with the majority of the Hindu Members here. I am not a Hindu. I have never followed the Hindu Law. I am constrained to say that this law is a conversion law for the Sikhs. You are bringing in totally obnoxious principles, certain novel innovations which have never been followed and which in the villages have never been heard of and you are forcing down our

throats something alien to us. Even the ladies here, though few, are consulted and listened to and we the seven Members are unanimous about Sikh opinion that certain provisions which are retrograde and obnoxious should not be forced on us. My friend asks whether they have passed any resolution to that effect. My grievance is that Sikh opinion has not been consulted. The very fact that Dr. Ambedkar has not received the memoranda of the Sikh societies and S.G.P.C., which is an authentic body to speak on behalf of the Sikh community so far as their personal law is concerned as also their religious precepts shows that the Sikh community has not been consulted.....

Sardar Hukam Singh (Punjab) : Resolutions have also been passed in certain Sikh conferences against this Code.

Sardar B. S. Man : My hon. friend Sardar Hukam Singh enlightens me that there have been resolutions. At the time of the original introduction of the Bill or at the time of the formation of the Select Committee no Sikh Member was either consulted or represented on the Committee. Dr. Ambedkar says that Gyani Gurmukh Singh Musafir was there. Would he then listen to his advice, if he was there? If there had been a single Member of the Sikh community would he give due weight to his opinion? He was not a member of the Select Committee then but when the House adjourned and later when Dr. Ambedkar agreed to consult more *pandits* and he had a sort of informal conference, incidentally then Sardar Gurmukh Singh Musafir was asked to give his opinion. If as he says that he consulted Sikh opinion in the person of Sardar Gurmukh Singh Musafir then please listen to his advice so far as the Sikh community is concerned. But the Government did not think it proper to include Sikh Members in the Select Committee and we of the Sikh community were never really agitated because till this day we were led to believe that agricultural property would not be touched and will be made an exception. Suddenly when this Bill is introduced we find that in his wisdom he has brought even agricultural property within the purview of this Bill. We were indifferent in the original instance because of the exemption of agricultural property and we never really applied ourselves to the provisions of the Bill. Now this Bill has suddenly emerged : it is a hotchpotch, it is retrograde in many respects and an advance in some other respects, it is a heterogeneous combination and it is thrown at our face asking us to accept it. I frankly admit that I for one fail to comprehend its provisions and much less will the illiterate person or peasant in the villages. Much less so an illiterate person, a peasant in the field, because the peasant was told. " do not be worried because it is not going to touch you ". My grievance is that Sikh opinion was not consulted to any appreciable degree. And now when you pass this Bill with the help of the Hindu majority here, it will leave a very bad taste and memory in the minds of the Sikhs that in spite of their unanimous opposition to the Bill, in spite of the fact that they were led to believe that most of the provisions of the Bill will not apply to them suddenly, at the fag end of the session it was

passed much against the will of the community.

An Hon. Member: Then let your Members show the opposition.

Sardar B. S. Man: Yes. My esteemed friend, Sardar Hukam Singh who can speak on behalf of the Sikhs in a much better capacity than myself has shown his opposition. After all, it is not a political matter that you may not accept his advice. It is not such a matter in which because he sits in opposition his opinion may be declined. On matters of personal law, on matters of religious precepts, on matters of adoption of Hindu communal law, you must accept the opinion of the representatives here; and we are unanimously opposed to it. And if in spite of our opposition you proceed and make the provisions applicable, then it will be a strange thing—it will go down as something autocratic, something savouring of the communal. It so happens that we are only seven Sikh Members here. But we want that so far as religious matters are concerned, so far as personal law is concerned, due weight should be given irrespective of the fact that a section may be numerically very much weaker. You have already made exceptions. I am not arguing on these lines because you have made exceptions. Because a Muslim is allowed to marry four wives, I do not say that I should be allowed to marry four times. The fact is that you have made exceptions. Why? Because you found that the law of the Muslims, the law of the Christians, so far as their personal law was concerned, was absolutely different. And since it was completely different and in many respects diametrically opposed to the Hindu Code, therefore you made an exception so that it may not be forced down their throat. That way you gave a latitude and thus you accepted the principle that irrespective of the fact that the Hindus may be in majority here they will not force a law of theirs, so far as their personal usage, religious precepts, etc. are concerned, down the throat of any minority. If you have accepted this because the Muslim Law and the Christian Law and even the Parsi Law is fundamentally different, then I may be permitted to prove on the floor of this House— on any given subject that you are trying to legislate, for example, marriage succession or divorce—that the Sikh Law is entirely different. Then I claim the exception, which you have extended to the Muslims. Because the Muslims proved that they were governed by an entirely different set of laws they were given an exception. And if I prove here that I am also governed, in every single item which you are trying to legislate here, by a different law, and that my law is fundamentally different from yours, then I claim the same concession, which has been extended, to Parsis, Muslims and Christians should be extended to me also.

Mr. Chairman: The Hon. Member may continue tomorrow.

The House then adjourned till Half Past Eight of the Clock on Wednesday, the 19th September, 1951.

HINDU CODE—contd.

9-30 A.M.

Clause 2.—(*Application of Code*)—*contd.*

Mr. Deputy Speaker: Before the discussion starts I might inform the House that this is the sixth day of the debate on clause 2. Practically all shades of opinion have been covered. (*Interruption*). It is not as if every hon. Member should be allowed to speak. The matter has been sufficiently placed before the House both for and against the Bill as a whole and also particular clauses. We must be able to see the end of the discussion so far as clause 2 is concerned. I would request hon. Members not to occupy the whole time but give opportunities to other hon. Members so that we might close the debate on the clause today. Hon. Members will try to be brief and short, as all the points have been elaborately discussed already.

Sardar B. S. Man (Punjab): When the House adjourned yesterday I was advocating that the Sikhs be absolved from the operation of the Bill and I was basing my arguments on two counts. One was that we in the Punjab are predominantly agriculturists, who form 95 per cent. of the population and the Sikh community forms a predominant part among the agriculturists. We in company with other fellow agriculturists, both Hindus and Muslims, are governed not by a Brahmanical rule of law, but by an entirely secular set of laws. We are governed by customs; secular customs and they are different fundamentally from the proposed provisions of the Bill. Secondly, I said that Sikh opinion on this vital matter has not been consulted. I was dealing with the second point.

I have now looked into the matter and gone into the entire body of opinion circulated to us in the report of the Hindu Law Committee and I find to my dismay that not one authentic opinion on behalf of the Sikh community has agreed to this Bill. (*An hon. Member: How authentic?*) There is an interruption asking how it is authentic. Perhaps many hon. Members in this House may not be aware that we have a statutory body for the Sikhs set up by law which votes according to the law made by the Government of India. There are 151 members who represent the entire community for the management of the *gurdwaras* and the administration of their religious laws. This body is known as the Shiromani Gurdwara Prabandhak Committee. Incidentally it may be taken in this House that this body is dominated by certain very very aggressive or communal Sikhs but it will be a surprise to the House to know that at present its president is no less than Sardar Nagoke, a staunch Congressman. The body is entirely dominated by Congressites. This body which is not aggressively communal and which has been set up by statutory law has expressed its emphatic opinion against the Bill. Nothing can be more representative than the opinion of the S.G.P.C., let alone the numerous conferences and gatherings of Sikhs, which have expressed their opinion against it.

The Minister of Law (Dr. Ambedkar) : Where ?

Sardar B. S. Man: Outside the House, I ask the Government to take one position. Either pass this Bill because you are sure that the majority of the Members here, who are representatives of their communities, want it or you think that the representatives of a particular community are so outmoded that they do not represent the real opinion outside the House, which wants the Bill. Stand on any of these two positions either inside or outside the House. We are six members here representing the Sikh community. (*An hon. Member:* You said seven yesterday.) The seventh is from U.P. Even if you are prepared to base your position upon his opinion I am prepared to risk it, though I have not consulted him because I know very well the opinion of the agriculturists and he is one of them. We six Members here represent P.E.P.S.U. and the Punjab. You cannot say that we all belong to the same party. Here are Ministerialists, there is an independent like Sardar Sochet Singh, people who are diametrically opposed to Congress party like Sardar Hukam Singh, who is an Akali leader and there is the Congressman Sardar Gurmukh Singh Musafir. I ask the Government on whose opinion you have derived the impression that the Sikhs want the Bill. I challenge that we are unanimously opposed to it. Do not force it on us just as you have not forced it down the throats of Christians. The Christians numerically are almost the same number as we in the Punjab. You have made an exception of the Christians but you are not prepared to make an exception of the Sikhs. As representatives in this House we do not want it. If you say that people outside want it, I ask the Law Minister and the Minister of State Mr. Tyagi, who is now a Government supporter, to produce a single opinion to show that we want it. (*Interruptions*)

The Minister of State for Finance (Shri Tyagi) : *Indicated dissent.*

Sardar B. S. Man : I am sorry I referred to Mr. Tyagi, as I thought that the interruption came from him, since I was opposing the Government and he was supporting it now.

Shri Tyagi : I am a widower and I have no interest either in marriage or divorce.

The Minister of States, Transport and Railways (Shri Gopaldaswami) : Who knows ? You may yet improve !

Sardar B. S. Man : Many who are widowers here want the divorce system to be there because they hope to find their deliverance through it. However, Mr. Tyagi is an exception. In spite of the fact that he is a widower he is against divorce, rather an unusual phenomenon.

Sardar Sochet Singh (P.E.P.S.U.): He may be interested in divorce in his neighbour's house.

Sardar B. S. Man : So, as I said, we were not consulted. Although, political opinions are very divergent on the Sikh community, the present Government is not listening either to the Congress Sikh, the Akali Sikh or the independent

Sikh, nor even the Ministerialist Sikh. It is surprising how the Government has come to the wonderful conclusion that the Sikh opinion has been sufficiently agitated and consulted. After my speech yesterday, certain friends came to me and told me " Mr. Man, it is all right. We admit that your customs are different and that you were not consulted sufficiently. But why can we not legislate for you? Because all along you have been a Hindu and you were governed by Hindu law." I shall come to that point of whether we have ever been governed by Hindu law, but as to the point whether we are Hindus, I should not like to repeat the argument here but I would like to mention something in that connection. I came across a pamphlet yesterday wherein it is said that if you go to a village and tell a Sikh, " You are a Hindu ", the answer will be not in words but a slap on your face. I will not—1 dare not—use that argument here.

Pandit Thakur Das Bhargava (Punjab): How are the Sikh agriculturists differently placed from the Hindu agriculturists of Punjab?

Sardar B. S. Man: I would have much liked to argue, and in fact I am actually basing all my arguments on that fact, that as an agriculturist I am in the company of Hindu agriculturists and the Musalman agriculturists. And my lawyer friend knows perfectly well that the Sikh agriculturist, along with the Hindu agriculturist and the Muslim agriculturist, is governed by a customary set of laws applicable uniformly to all. If I am using the word Sikh, it is due to the bane of this Bill. I would have liked to argue that the agriculturists of the Punjab be absolved, but what shall I do when the Bill—in that respect a backward Bill, a communal Bill—legislates for Hindus, Sikhs, Jains etc. and talks in terms of communal groups and not in terms of secular groups?

Pandit Thakur Das Bhargava : Is it not a fact that the Hindu non-agriculturists living in the villages follow the same customs as the Hindu agriculturists ?

Sardar B. S. Man: Yes. That is the beauty of our entire law in the Punjab. It is advancement on other parts that we in the Punjab are governed by village communities and not by religious law. We are governed by land and we revolve round land laws, secular laws. Let me give a quotation to meet this interruption. I will quote from *Rattigan 's Digest*. My whole point is that, so far as this law is concerned in its application to Punjab, it is not reformative: it is not progressive because it is too conservative, because it is too orthodox; it is retrograde because it is communal—our law in the Punjab has gone much farther at least so far as secularism is concerned. In our village communities we have been governed by the same set and same pattern of laws; Hindus, Muslims and Sikhs, agriculturists and non-agriculturists, were attached to the land all these ages; they imbibed the wisdom of the ages and the spirit of the times and throughout they were governed by one set of laws. But Dr. Ambedkar comes out one fine morning with this Hindu Code Bill—perhaps he is jealous of us—and says, " I am going to cut across you and split you into

two communal groups ". Either you be a Hindu or you be a Mussalman ! That is the effect of it.

Shri Naziruddin Ahmad (West Bengal): Rather, " give up all religions "!

Sardar B. S. Man : Now what does *Rattigan's Digest* say in this matter ? It says :

" It had long been felt by those best acquainted with the habits and customs of the rural population that neither the *Sham* nor the *Shastras* really exercised any direct influence among them." Then:

" The Hindu law extravagantly exalts the Brahman; it gives sacerdotal reasons for secular rules. In the Punjab, Hindus and Mussalmans converted from Hinduism may fear or feed the Brahman; but in civil affairs Punjab Customary Law ranks him with other men. It is essentially unsacerdotal, unsacramental, secular."

Mr. Deputy Speaker: Is not the *Shariat* now applicable to the Punjab ?

Sardar B. S. Man : I am splitting up the Punjab population into two distinct groups : one group comprises 95 per cent. of the population and the other remaining five per cent. The 95 per cent., and in fact even more, live in the villages and is attached to the land.....

Mr. Deputy Speaker : Was not *Shariat* passed in undivided India ?

Sardar B. S. Man: I shall come to the Punjab laws. There' the custom is the primary rule of decision to the exclusion of *Shariat* as well as the Hindu Law,

Dr. Ambedkar : That has been overruled by the *Shariat* law. **Sardar B. S. Man** : *Shariat* will fill in the gap when there is no customary law prevalent. It is quite distinct. I must refer to that later since I do not want my argument interrupted now. We have legislation—the Punjab Laws Act of 1872, clause 5—where it is distinctly laid down that in Punjab the first rule of decision will be the customary law and where there is no custom and a gap arises only then the Hindu law or the *Shariat* law will come in.

Shri R. C. Upadhyaya (Rajasthan) : Are the customs reduced to writing ?

Sardar B. S. Man: Not only reduced to writing but compiled, listened to and decided—not for ten or fifteen years but for ages.

An Hon. Member : Is not your custom the same as Hindu custom ?

Sardar B. S. Man : What innocence ! If I were to prove to my friend here that my custom is entirely and fundamentally different from Hindu law, will he be prepared to make an exception ?

Pandit Thakur Das Bhargava: If a custom is reasonable. Dr. Ambedkar is bound to accept it (*Interruption*).

Sardar B. S. Man : The interruptions are many. Interrupter says that if I convince him he is bound to accept it. I do not know whether I can convince a person who is not willing to be convinced: Dr. Ambedkar says, even if he is convinced he will not accept it.

Now, let me give a quotation from *Mayne's Hindu Law* ; it has held the field for a fairly long time and is a fairly authoritative commentary. It says:

" As regards the Village Communities, the Punjab and the adjoining districts are the region in which alone they flourish in their primitive rigour. This is the tract which the Aryans must have first traversed on entering India. Yet it seems to have been there that Brahmanism most completely failed to take root and the religious element has never entered into their secular law: " If I have enjoyed emancipation from Manu for so long a time, will it not be a tyranny of the times if I have to submit now to a modern Manu ?

If I have not been governed by Brahmanical rule and I have had secular law for a long time in Punjab, if I have not accepted Manu's religion, then let me assure the House that Punjab is not going to accept Ambedkarian religion henceforward, (*interruption*). Let me give credit to Manu that at least he was original in many respects, but my modern Manu—oh, what a fall has he had! He is neither original nor progressive. (*Interruption*). You ask who is the modern Manu? Well, I need not say.

Dr. Ambedkar: I am not a modern Manu.

Sardar B. S. Man: In Punjab we do not recognise communal groups and the application of this law will, for the first time introduce the communal element there. I shall read to you from *Mayne's Hindu Law*, 9th Edition, Page 48, where it is said:

" The special interest of Punjab Customs arises from the fact that Brahmanism seems never to have succeeded in the Punjab. Accordingly, when we find a particular usage common to the Punjab and to Sanskrit law, we may infer that there is nothing necessarily Brahmanical in its origin. The Brahmans are not, in the Punjab, the depositories of Customary law. To ascertain it, we must go to the Jirga, or Tribal Council, if there be one, or to the elders of the tribe.

Shri R. K. Chaudhari (Assam): I am sorry to interrupt, but let us come straight to the point. Does the Hon. Member want monogamy or not ? That is the question.

Shri Tyagi: Why beat about the bush ?

Sardar B. S. Man: A false sense of security is being created in the House through the Press that Government want to proceed with only marriage and divorce. Has Dr. Ambedkar declared here definitely that he is leaving out the other portions and he is only concerned with marriage and divorce ? I am discussing the applicability of this Code in its entirety. I proceed on the assumption that the other portions are not going to be dropped. I caution my friends. Once Government lull you into a sense of indifference and false feeling of security, they will proceed with the other portions.

Shri R. K. Chaudhari: Please answer my question. According to the customary law monogamy is allowed in Punjab. Are you in favour of continuing the monogamy law?

Sardar B. S. Man: I shall discuss that threadbare, law by law. Mr. Deputy Speaker : We are not going to take up other matters. I think, it was made

sufficiently clear by the Hon. the Prime Minister who stated that they would proceed only with marriage and divorce. If this is accepted, I hope the hon. Member will resume his seat.

Sardar Hukam Singh (Punjab): If this clause is accepted at this stage, would it be again taken into consideration when the other Chapters come up? Once it is made applicable, certainly the whole thing has to be thrashed out at this stage.

Mr. Deputy Speaker: If the Bill is confined to marriage and divorce and the other parts are brought in by a separate Bill, does the Hon. Member think that this clause will apply to everyone?

Shrimati Durgabai (Madras): What is the basis for the Hon. Member's statement that the most important Chapters relating to inheritance will be dropped? What is the source of his information?

Sardar B. S. Man: The hon. lady Member comes to my rescue for the first time. It is exactly because the other portions have not been dropped, I say that I am perfectly entitled to discuss the whole body of it.

Shri Bharati (Madras) : The Prime Minister and the Law Minister have already stated that due to factors of time etc. it is more than unlikely that the other Chapters would be taken up. Although it may not be a categorical assurance, for all practical purposes we may take it as the official decision. If we take the practical aspects of the matter, in all probability, I may even say 99 per cent. the other Chapters would not be taken up during the current session. It is just possible that we may take them up during February or March next, but during the current session it is absolutely impossible to take up other Chapters. It will be great fortune if we finish Chapter II. Therefore, I would request other members to co-operate. At least, let us pass this portion. I think it will be in the interests of the discussion if Dr. Ambedkar makes some kind of statement and gives, if not a categorical assurance at least some indication that only the provisions relating to marriage and divorce would be passed during the current session.

Pandit M. B. Bhargava (Ajmer): Has the hon. Member been briefed by the Government of India to take up this position?

Mr. Deputy Speaker: Hon. Members are entitled to speak on both sides.

Dr. Deshmukh (Madhya Pradesh): After all, clause 2 does not make any distinction between different portions of the Code as it has been placed before us. If my hon. friend does not say at the present stage all that he wants to say with respect to the other Chapters, he will be precluded from saying them later, because clause 2 is of general application to the whole Code and does not refer merely to marriage and divorce. Once clause 2 is accepted, it will apply to the whole Code and unless we have an amendment saying that it applies to marriage and divorce only—and no such amendment is before us from Government—1 think the hon. Member cannot be stopped from bringing in other Chapters.

Shri J. R. Kapoor (Uttar Pradesh) : Even if clause 2 is passed in this form or an amended form, it will not preclude any one from saying at any subsequent stage that any particular portion or Chapter shall not be applicable to this section of the community or that. Take for instance the question of succession and inheritance. When that Chapter is taken up, it will certainly be open to us to add a clause to the effect that this part of the Code shall not be applicable to Sikhs or this or that community. The passing of clause 2 would leave the door open to discuss the matter later on and it may be advisable for all of us, if we are agreed on the marriage and divorce laws subject to such amendments as may be acceptable, to proceed with the Bill.

Mr. Deputy Speaker: I am in a fix. I thought I would be able to ask hon. Members to conclude the debate on this matter having regard to the statement by the Hon. the Prime Minister that the Chapter on marriage and divorce only will be taken up. He said so particularly. Now, if clause 2 is to apply to all the other Chapters I do not know how I can ask the hon. Members not to refer to them. That is my fear. I would like elucidation from the Hon. the Law Minister. Otherwise the scope will become wider and it would not be reasonable for me to say that the debate shall be concluded so early.

Dr. Ambedkar: The Hon. the Prime Minister stated the other day that the House will rise on the 6th.

Shri Naziruddin Ahmad : That is only provisional.

Dr. Ambedkar: Whatever it may be, it is there. I think I can say without giving away the position of the Government that it is quite clear that it would not be possible to proceed in this session beyond the Chapter dealing with marriage and divorce. When we reach the end of that Chapter. I propose to move certain amendments to these two parts in order to make them self-contained and to attach to them certain Schedules which go with marriage and divorce. I think the House may well take it that that is the intention of Government so far as the present session is concerned. When, for instance, the other parts are taken up, no doubt any Law Minister who would be then piloting the Bill and the Draftsmen would see to it that those parts were also self contained and the same definition and rules as regards applicability will have to be repeated in the other parts when those parts are placed before the House. Obviously, the clauses dealing with applicability when they will be confined to this part would by no stretch of imagination be extended to the other parts unless they are repeated there. I think that any lawyer Member of this House should be able to understand that that would be the position, so that when the other parts come to be discussed it would be open to the House to see whether the same definition which is given now as to the territorial applicability of this part or the social applicability of this part should be the same as will be enacted so far as this part is concerned. It will be open to the House and also for the Government to see to it whether those parts should be made applicable universally in all parts of India, or whether they

should be applicable to all communities, or whether any exception might be made. That is a matter which I think should be left to the future Government, the future Law Minister and the future Parliament.

10 A.M

Shrimati Renuka Ray (West Bengal) : On a point of order. Sir, clause 2 has been under discussion for three days in the previous session and three days now six days in all. Almost all the speeches on clause 2 have gone into the merits of the provisions of the whole Bill. I want to ask whether once the consideration stage is over, is it open on a discussion of a clause, to go into every detail of the Bill as it has been done during the debate on clause 2?

Shrimati Durgabai: May I seek a clarification. In the light of what the hon. the Law Minister has stated and also in the light of the fact that this House attaches considerable importance—the greatest importance—to the clauses relating to inheritance, because they are based on the principle of equality, is it the intention of Government to bring a separate Bill relating to those clauses in the next session of Parliament, if not during this session of Parliament?

Dr. Ambedkar: I am afraid that is entirely outside my jurisdiction. It is a matter which I should leave to the Prime Minister to answer.

Shri Deshbandhu Gupta (Delhi): In view of the statement that has been made by the Hon. the Law Minister, may I know whether it is also the intention of Government to change the title of the Bill, because it is no longer a Code?

Dr. Ambedkar: When I reach clause 55, I shall move all the necessary amendments to make this an independent Bill and take it out of the Code.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): If I have gathered purport of the hon. Member's question, it was whether other parts of the Bill will be introduced in this session or in a subsequent session. So far as Government are concerned, we have often stated that we stand by the whole Bill. Our difficulty has been the difficulty of time, and we decided to proceed with Part II in this session and to pass it. That did not mean that we were giving up any other part and we would very much like to have the other parts passed too. But practically speaking, there is no chance of our doing that in the present session. Whenever we can avail of an opportunity we should like to take up the other parts.

Mr. Deputy Speaker: The Hon. the Prime Minister was not here when this point was raised. When Sardar Man was on his legs, he was referring to the other parts of the Bill inasmuch as they will be applicable to the Sikhs. At that stage, a point was raised as to whether the Hon. the Prime Minister has not already stated that this measure will now be confined to marriage and divorce and as such discussion should be confined to those two subjects. Having regard to the number of days that have been spent on this clause, I wanted to conclude the discussion on this today. The Hon. the Law Minister then said that it was intended to confine this Bill only to marriage and divorce and

suitable amendments would be moved even with respect to the title. In regard to the other parts of the Bill it was said that a fresh Bill would be introduced which would also cover the applicability of this Bill to the territories or communities. A further question was asked as to when that Bill would be introduced, to which the Hon. the Law Minister replied that the Prime Minister alone must answer that question. That is why I was a little doubtful if the Prime Minister has been apprised of the discussion that took place here.

Dr. Ambedkar: I perhaps forgot to say that after clause 55 is reached, I shall not only introduce suitable amendments with the object of making that particular part self-contained, but I shall also move a motion that this Bill, so to say as amended, be passed independently of the other parts.

With regard to the other question, I have looked into the Rules of Procedure. There will be two courses open. One course that will be open to me would be to move that the other clauses be put and negatived, so that Government will be free to bring them together in a separate code or separate part or separate Bill and move them whenever they want. The other course permissible—subject to your ruling—under the Rules of Procedure would be to let those parts stand. I find from the rules that there is nothing to prevent, this Parliament from taking out a particular part or a particular portion from a whole Bill that has been before it and to treat it as an independent Bill and pass it. That is a matter, which I am prepared to leave to you and to the House. Our present intention is to stop with clause 55 and certain relevant Schedules. I think that makes the position clear.

Shri Jawaharlal Nehru: My hon. colleague has made the position quite clear. I entirely agree with him. We are for the present going to confine ourselves to Part II and complete it as a whole, apart from the rest. Then it depends on various possibilities, as to how best to deal with the rest of the Bill. But this ought to be kept separate.

May I also qualify, or amend, a statement, which I made about the length of this session. I said that we would like it to end on the 6th October. As I see the debate proceeding, there is no chance of its ending on the 6th October. So, it will have to go on till we finish important work.

Shri Deshbandhu Gupta : May I seek a clarification ? The Hon. the Law Minister has made it quite clear that this will be a self-contained Bill dealing with monogamy, marriage and divorce. If that is so and the subsequent Bills will also be self-contained Bills, then the question of Hindu Code as such does not arise. Therefore, there will be different Bills and codification will have to follow later on, if necessary. Therefore we are not proceeding with the Bill as it is. We are only proceeding with the different heads of the Bill and at the moment we are only concerned with these three things.

Shri Ramalingam Chettiar (Madras): There are several provinces, which have already got laws on monogamy and divorce.

Probably they are better, though the provisions that we are going to agree

here is a compromise. We are having this compromise simply because we are going to have a Code. In case the present law is going to be confined to marriage and divorce, why not leave those laws which are passed by the different provinces alone and leave it to the people of those provinces to choose. This is an important issue, which you have to consider.

Pandit Malaviya (Uttar Pradesh) : May I suggest to the Hon. the Law Minister whether it will not help if he did that at this stage rather than wait till the end ?

Dr. Ambedkar: I do not see any reason for doubting the motives of Government. I have said, and we propose to stand by what we have said.

Pandit Malaviya: I am surprised that he should think that there is any doubt of his motives in what I said. I asked, will it not help if he did it at this stage, because if that is the thing which we are considering, it might become a slightly different situation for some of us.

Dr. Ambedkar: Take it that it will be so.

Pandit Malaviya: When we are in Parliament legislating, it is difficult to take things unless they are done. I simply asked, will it therefore not help if it is done now.

Mr. Deputy Speaker: The Hon. the Law Minister has made the intention of the Government clear. My only difficulty is this—I am not asking him to do it immediately—but when once we pass clause 2 and take up clause 55 I have got a doubt technically as to whether we can modify clause 2 then, at that stage.

Dr. Ambedkar: At the time when you put this clause 2, I want to make a reservation that I reserve to myself the necessary liberty of making certain consequential amendments to clause 2. Some Hon. Members: No, no. How can it be ? **Dr. Ambedkar**: That is perfectly possible.

Pandit Malaviya: That is authoritarian and not parliamentary !

Mr. Deputy Speaker: There is nothing unparliamentary. The Hon. the Law Minister has been extremely reasonable. There is no good losing one's reason or making recriminations. It does not contribute to the coolness of the atmosphere that must prevail here. I understand the Law Minister. He has no mental reservations. He wanted to bring it by way of amendment to clause 55. Then I thought within myself that at that stage it may be a bit too late. He has suggested an alternative that on clause 2 he will make a reservation to move the necessary consequential amendments. Even there I have a difficulty. I shall no doubt conclude the debate on this clause with that background that this clause, that is clause 2, will apply only to marriage and divorce. But I shall withhold putting it to the House. I shall conclude the entire debate and take it over after the Chapter is concluded. Now, in view of what has been said, hon. Members must be prepared to conclude the debate today.

Sardar B. S. Man: He need not dilate upon the other matters.

Shrimati Durgabai: Now that one hon. Member has stated that certain

State Legislatures have passed monogamy Acts, may I point out that only three States—Madras, Bombay and Baroda—have passed such Acts. In view of the fact that there is a lot of confusion being resulted on account of all the State Legislatures not passing the laws and on account of differing High Court judgements, it is highly necessary that there should be a Central law on monogamy and divorce so that it will be applicable to all States whether they wish it or not. Therefore, hon. Members may facilitate the discussion and passing of the Bill up to clause 55.

Mr. Deputy Speaker: Now that the scope of the discussion has been narrowed down let us pass it as expeditiously as possible and avoid, if possible, even sitting during Dusehra.

Shri Jawaharlal Nehru: May I suggest, Sir, that we sit on next Saturday ?

Mr. Deputy Speaker: I was not referring to that.

Shri Jawaharlal Nehru: I know. Sir, I was merely suggesting about next Saturday.

Mr. Deputy Speaker: That can always be done. But let us pass this as early as possible and not sit beyond 6th October, if it is possible to avoid it.

Pandit Malaviya: Even if it is necessary to sit beyond 6th October, I hope we do not sit during Dusehra but sit afterwards.

Mr. Deputy Speaker: That is accepted. We will not sit on any public holiday.

Sardar B. S. Man: Frankly speaking I am not able- to understand completely.....

Mr. Deputy Speaker: May I suggest that in discussing clause 2 the relevant merits of all the clauses that follow need not be referred to. References here and there are enough. I therefore wish to draw the attention of the hon. Member who is on his legs and also other Members that while the applications of those other clauses may be generally indicated here and there, matters as to how they ought to be or ought not to be and how they ought to be modified and so on may all be taken up when we come to the other clauses.

Shri Sarwate (Madhya Bharat) : In case we are to postpone the final passing of this clause, would it not be better that all discussion on this clause be withheld to a later stage ?

Mr. Deputy Speaker: We have already spent a sufficient time over this clause, hon. Members may now take it definitely that it is the view of the Government as stated by the Hon. the Law Minister that the effect of this clause will be confined only to marriage and divorce. On that footing it is open to hon. Members to say where it should or should not apply—to Sikhs or Buddhists or Hindus or to certain territories etc. The discussion will be confined to that extent only and not extend to other things.

Pandit Malaviya: May I suggest for the consideration of the Hon. the Law Minister one procedure? We may finish this discussion on clause 2 today. But

after the discussion has taken place, instead of putting it to the House, we may leave it over. There may be no more discussion on it. I am only making a constructive suggestion.

Mr. Deputy Speaker: I have said so already. I will conclude the discussion and call upon the Law Minister at one o'clock.

Shri Syamnandan Sahaya (Bihar): If clause 2 will apply only to marriage and divorce, what will apply to the other clauses ? What about the other clauses of the Code? What will be the application clause?

Mr. Deputy Speaker: All the other clauses also will be suitably modified. When they are taken up submissions may be made.

Shri Syamnandan Sahaya: Are there to be two application clauses in the same Bill?

Mr. Deputy Speaker: Hon. Members were either not here or were not hearing properly.....

Shri Sarwate: I request one point to be made clear. We have tabled certain amendments. The amendments depend upon the scope of clause 2. So we may be allowed to move those amendments or take up those amendments later on.

Mr. Speaker: All the amendments are being discussed now. I am not going to allow any other amendments. Those amendments together with the clause, including the amendments moved by the Hon. the Law Minister, have been discussed. We have reached a stage. If in pursuance of all the other clauses that are taken up and adopted, we go back to clause 2 and any incidental amendments have to be made to clause 2, the discussion will be confined only to incidental, auxiliary and consequential amendments. Today we may take it that this must be over.

Shri R. K. Chaudhari: I want to have my doubts cleared on this point. I understand that clause 2 will apply only in cases of marriage and divorce. I want to know that when the inheritance chapter comes up will there be a saving clause in that and should it not apply to the rest ? This is not to apply to all but only to those who want to be governed. Will there be such a saving clause in that part?

Mr. Deputy Speaker: For the time being the Hon. Minister and that this Code was confined to marriage and divorce and all the other general clauses also would be suitably changed. As to what will happen when another Law Minister or this Law Minister will introduce at that time, it is a matter of conjecture and it is too early to predict what will happen.

Shri R. K. Chaudhari: How can you allow this clause to be passed; possibly it will be like the Damocles' sword hanging over us.

Mr. Deputy Speaker: Another clause will be introduced, a similar clause with suitable amendments and then the hon. Member can continue to speak as vigorously if not more vigorously. Let us not spend any more time on this.

Shri J. R. Kapoor: May I therefore, submit that as you are anxious to close

the discussion at one o'clock today, the discussion may now start on the amendments rather than on the general aspects; otherwise, we shall have hardly any time to deal with specific amendments, which really matter so far as clause 2 is concerned.

Mr. Deputy Speaker: There will be discussion both on the clause and the specific amendments. I am not going to allow any hon. Member merely because he has tabled an amendment just to go on speaking here.

Shri Bhatt (Bombay) : Sir, what has been decided today and what you have conveyed to the House, is that Clause 2 will not be put to the vote of the House today. I would, therefore, like to know whether any hope is left for us to move our other amendments in view of the stand taken by the Hon. Minister of Law today. Now he wants to enact the Marriage and Divorce Law separately. Will it be in order in this connection to table any amendment, as suggested by me previously, to the effect that the Law should be made applicable to the whole of India and would you permit it to be moved?

Dr. Ambedkar: You have already tabled an amendment to that effect.

Shri Bhatt: The amendment tabled by me is not on the lines of a similar amendment that was moved in connection with the Sarda Act.

Mr. Deputy Speaker : There is no good asking the Hon. Minister whether he wants it to be applied to every individual in this country and every part of this country. Amendments have already been tabled. Those amendments will be put to the vote of the House and if the vote decides against the Law Minister, he will gladly accept it. Therefore, there is no question of any further amendment regarding territorial restriction or restriction regarding communities. They are all before the House and I am not going to put them to vote today. I will put them later on. It is for the House to accept or reject so far as that matter is concerned.

Pandit Maitra (West Bengal) : The Hon. Law Minister says he has not agreed. He says, " I will not gladly accept ".

Dr. Ambedkar: I said gladly I will not accept.

Shri Radhelal Vyas (Madhya Bharat): On a point of order. May I know, as the debate on clause 2 will conclude today and also the Hon. Law Minister is replying, whether later on any amendment would be allowed to be moved to clause 2 at that stage?

Mr. Deputy Speaker: Hon. Members are unnecessarily raising points of order. It is not for the hon. Minister to accept or reject an amendment. Consequential amendments, if found in order, will certainly be moved and allowed by the House. Secondly, the discussion on the amendments on clause 2 tabled today will conclude. If any new amendments come in as consequential to the clause that we are now going to pass, they will be placed before the House.

Such consequential amendments to clause 2 will necessarily be made either by the Law Minister or by any hon. Member and then discussion on the

consequential amendments will follow and the original clause with the consequential amendments will all then be put to vote and ultimately accepted or rejected.

Shri Ramlingam Chettiar : I do not know what a consequential amendment is.

Pandit Thakur Das Bhargava: I ask whether it is fair to discuss only divorce and marriage. Is this procedure adopted in any House in the world that we should discuss only divorce and marriage, without knowing the implications and the rights and duties of the husband and wife or how they will succeed each other? I think this will be extremely disingenuous and the real context of cognate matters will be missed.

Pandit Maitra: Sir, you just now ruled that only consequential amendments will be allowed to be moved but how could you know what is the consequence unless the amendments are put to vote and are either carried or rejected. Then we will be in a position to know what may be the consequential amendments. Therefore, this requires clarification. One cannot move a consequential amendment at a certain stage unless he knows the consequence after the amendments that have been tabled have been rejected or accepted. Unless one knows which particular amendment has been accepted or rejected, the question of a consequential change cannot arise. It is only when one knows the implications of a particular motion or amendment being accepted or rejected that the question of putting any consequential amendment would arise.

Shrimati Renuka Ray: Cannot the discussion, as to what is consequential and what is not, be allowed to be taken up afterwards? That may take another six days.

Mr. Deputy Speaker: As I stated, subject to what the Hon. Law Minister may say—and I would like to have information—hon. Members are anxious to know beforehand, whether any particular communities are going to be excluded and whether any particular territories are to be excluded—whether they have to be applied in part or wholly at one stretch etc. These are the subject matter of various amendments. This will apply not only to marriage and divorce but all the other things also. But there is nothing peculiar in this, which cannot be applied as it is into marriage and divorce. As has been suggested by the Hon. Law Minister, he does not pursue the other matters. Only for the words " Hindu Code ", he might say that this is an amendment to that extent.....

Dr. Ambedkar: I will say " an Act ".

Mr. Deputy Speaker: " The marriage and divorce Act " instead of the word " Code ". What I feel that this must be put to the vote of the House. As soon as the Hon. Law Minister finishes his speech, I shall put it straightway to the vote of the House.

Shri Ramalingam Chettiar : *Rose—*

Mr. Deputy Speaker: The hon. Member's issue has already been answered. Any hon. Member, who thinks that there are more progressive laws in the States, can table certain amendments to this clause when we come to the clause by clause stage and thus bring it into line with those State laws. The hon. Member has stated that there are such pieces of legislation in three States and for the sake of uniformity, there must be a central legislation, particularly in view of the fact that this is a Concurrent subject. It is not a difficulty, which is insurmountable.

Shri Ramalingam Chettiar : It is insurmountable.

Mr. Deputy Speaker: The Hon. Law Minister does not yield on that point.

Shri Ramalingam Chettiar : I ought to be allowed to move an amendment.

Mr. Deputy Speaker: He has had an opportunity to move it. I am not going to allow any further amendments to be moved. What prevented him from moving this particular amendment before ? When the time comes, let me decide upon this amendment. We will assume that the clauses, inheritance etc. were before the House and we went on from day to day. This House may not wait until he chooses to bring this Bill in line with the State Legislatures. It is an unreasonable demand on the part of the hon. Member. Now so far as clause 2 is concerned this clause will apply to any part. With regard to the other parts, we will confine them only to those parts and not proceed with the other parts. For the purpose of clarification. I will not allow discussion to go on at length and on certain imaginary things, which may not be placed before this House. We want to cut short the discussion and the Hon. Minister made that statement and has explained that the consequential amendment will only relate to the nomenclature of this Code. I will put it when we come to clause 55 and even if that is passed in the third reading, we can have it. At one stretch I will allow the discussion and then the Hon. Law Minister will reply. Then I will put all the amendments to the vote of the House so that there may be no difficulty as to whom it applies or whether they should take any further proceedings etc.

Dr. Ambedkar : I just heard that you would call upon me at one o'clock. But I thought that there is some other business at one o'clock. Perhaps you might give me a minute to start.

Shri R. K. Chaudhari : We must know the consequences of marriage and divorce; that is one thing. Then, Sir, you are willing to allow us discuss, about marriage and divorce and all that without knowing what the effect of the marriage would be, whether the issues of the marriage will get inheritance in this way or that way. That will put at a great disadvantage. I am going to contract a marriage and yet I do not know what the consequences are.....

Shri Syanmandan Sahaya: We are opposed to it.

Shri Deshbandhu Gupta : Are we to take it that the hon. Member is unaware of the consequences of marriage and divorce at this age ?

Shri R. K. Chaudhari: I take exception to this. Sir, I was pointing out.....

Mr. Deputy Speaker: In all serious matters, the hon. Member has got a knack of introducing a good feeling of humour. To that extent he has relieved the tension. The hon. Member knows too well that he is directly responsible for all the acts that he commits whether on account of conjugal felicity or otherwise. Now, Sardar Man.

Sardar B. S. Man: You will sympathise with me, Sir, being a junior Member, for this interruption for so long a time. .

Mr. Deputy Speaker: The hon. Member may confine himself to the amendment whether this Bill ought to apply or not. He has already said enough.

Sardar B. S. Man: A little allowance due to a junior Member may be allowed to me. Sir. I am exactly in doubt as to what the intention of the Government is. There have been threats of certain reservations, mental reservations regarding moving certain amendments; then there was the explanation by the Prime Minister that they are not proceeding with the Bill except for these two parts because of lack of time. If, incidentally, the House is in a mood to finish it tomorrow, the same position will be there because there will be time to proceed with the rest of the Bill. It was a categorical question whether the Government proposed to drop the rest of the Bill, not in this session; but whether the present Government is dropping the other portions, now or hereafter. These assurances are of little comfort to me that up to the 6th of October this will not be taken, or that it may not be taken in the present session or it may not be taken for lack of time. This sort of argument is no good.

Mr. Deputy Speaker: I may clear the ground. I take the statement of the Hon. Law Minister, the sponsor of the Bill, as the authoritative opinion of the Government. On the footing that they will confine this Bill to marriage and divorce, the hon. Members may go on. That is how I have understood. If there is anything wrong. I may be corrected.

Sardar B. S. Man: I was attaching equal importance to the Prime Minister's statement also. I shall confine myself to my amendment that the Sikhs should be absolved from the operation of this Bill.

The fact is that a certain erroneous impression has gained ground that the Sikhs are firstly, Hindus, and secondly, that they have been governed for a very long time by the Hindu Law. My case is that if I proved that the Sikhs were not Hindus and they were not governed to any appreciable extent by the Hindu Law, then, the Sikhs may be permitted to be out of the orbit of this Bill. In that point, I was interrupted again and again and asked how their law differed from the main body of the law. That was my difficulty. I had to prove that the entire mental structure of a Sikh agriculturist in the Punjab, in company with the Hindus and Muslims, was entirely different and the pattern of the present law is entirely different.

Shri Bharati: So far as marriage is concerned?

Sardar B. S. Man: Even so far as marriage is concerned. Just wait.

Shri Bharati: That is more important.

Sardar B. S. Man: Let me quote Sir Charles Roe from his *Tribal Laws in the Punjab*. This has been cited with approbation by Sir William Clarke, Chief Justice in 55 *Punjab Record* 1903 Full Bench. He says:

"The Hindu agriculturist of the Punjab..." The Hindu agriculturist follows the same law as the Sikh agriculturists.

"... knows nothing of caste except as represented..." Now, Sir, certain prohibited degrees are being introduced in the marriage laws. I have to point out that my law as regards marriages is different and more liberal than the present Hindu Code Bill. In fact, I do not know, after all the present assurances that only 55 clauses will be finished whether it will be a Hindu Code or not, or what Code it will be. You are asking me to speak upon a Bill even whose name I do not know or whose operation I do not know. Anyway, I shall be guessing that it will be a Civil Code or it will be a Marriage Act or some such thing and the word "Hindu" shall drop out. He says :

"The Hindu agriculturist of the Punjab knows nothing of caste except as represented by his tribe. No doubt, he respects the Brahman and calls him and feeds him on occasions of rejoicing or sorrow, but he would never dream of referring to him or to the Hindu Law for guidance in his daily life. If he has ever heard of the Dharmashastra at all, which is very improbable, he has only done so as a Spanish peasant may have heard of the Bible, he knows nothing whatever of its contents or principles, nor could the Brahman himself enlighten him...The Hindu law cannot be applied to the Hindu tribes, because they have never in fact followed or even heard of it and it is framed for a different state of society."

Mr. Deputy Speaker: Extracts from books should be small; it ought not to be reading whole books, chapter and verse.

Sardar B. S. Man: The quotation was very long; I have cut it short.

I have read it only from the beginning and from the end. My difficulty is this. While I am forced to cite the law...

Mr. Deputy Speaker: What is the book?

Sardar B. S. Man: The book I am quoting from is Rustomji's *Customary Law of the Punjab*. This quotation relates to a decided case law in 55 *Punjab Record* 1903 Full Bench.

I have to cite this law because in his previous speech the Hon. Dr. Ambedkar himself quoted a Privy Council decision showing that for a long time Sikhs have been governed by the Hindu Law. I am perfectly entitled today to remove that erroneous impression and show that we are not governed by the Hindu Law. As the position stands today, we are governed by a different set of laws. He relies upon his decisions. I rely upon my decisions. Hence the necessity to take some time of the House. I do realise your anxiety to finish this earlier. But Sir, this is the first time that an

amendment has been moved that the Sikhs be absolved from the operation of this Bill and in view of the vital importance of this matter to the Sikh community, I may be permitted to digress a little.

Mr. Deputy Speaker: Now that this Bill is confined to marriage and divorce, the hon. Member may show how far this is retrograde or inconsistent with his law and what is the harm in adopting this.

Sardar B. S. Man: I am quoting exactly those laws, which relate to marriage and divorce here. By the present law, certain prohibited degrees are sought to be introduced. I am proving that the prohibited degrees now sought to be introduced have never applied during the history of the Sikhs.

Mr. Deputy Speaker: Cannot that be an exception? As in the case of customs in the south allowing the marriage of maternal uncle's daughter, which have been validated, any deviation from the generally prohibited degrees will also be put in as an exception.

Sardar B. S. Man: Exactly, Sir, you are coming to my rescue. If the Hon. Law Minister says that so far as marriage customs are concerned, they will respect the customs of the Punjab or the customs of the Sikhs, I will have no quarrel; I shall sit down.

Shri Bharati : May I draw his attention to part (5) of clause 7 where it is provided, " unless the custom or usage governing each of them permits of a sacramental marriage between the two ". Custom is a local thing and that has overriding effect. We have already provided for all that, not only for south India. Where the custom provides for such a thing, it is straightway concerned.

Pandit Thakur Das Bhargava: But what he wants is that all the things incidental to marriage should also be governed by custom. That is what he is pointing out.

Shri Bharati : But he was speaking about prohibitive degrees and I pointed out that the necessary provisions are already there for these exceptions.

Mr. Deputy Speaker: No law says that a sister can marry a brother. There are prohibitive degrees accepted by courts and if there are other cases or other degrees, whether they come under clause 5 or clause 7 or any other clause, suitable amendments can be suggested and the matter discussed.

Sardar B. S. Man: My point is, since exceptions are made in the case of Muslims and Christians because their personal law is entirely different, why should we, though we are numerically small, not have the same...

Mr. Deputy Speaker: The hon. Member need not repeat his arguments over and over again. He has already stated that just like the Muslims, the Sikhs too should be excluded.

Sardar B. S. Man: Sir, may I seek the help of and invoke the good convention that is here in the House that whenever a law concerning the religious institutions of personal law of persons is concerned, the members of that community should be consulted and that their opinion should weigh ? I

am invoking that convention. Will not that convention be made applicable to us here ? If that is made applicable, then the whole trouble will cease and I shall sit down. My argument is, if today you pass this law with the help of the majority in the House—may I be permitted to add—the Hindu majority of the House, because for the first time such terms as communities—Hindus and Sikhs—are being used in this debate and that is the primary bane of this law...

Dr. M. M. Das (West Bengal) : On a point of information. Sir.....

Sardar B. S. Man: Is it a point of order. Sir? Otherwise I am not yielding.

Dr. M. M. Das: Is the hon. Member speaking on behalf of the Sikhs of the Punjab or on behalf of everyone in the Punjab?

Mr. Deputy Speaker: The Member is not yielding. I will not permit any more interruptions.

Sardar B. S. Man: The difficulty is, hon. Members who are not well acquainted with the law go on interrupting without understanding my point. As I was saying, that was a good convention and.....

Mr. Deputy Speaker: That point has already been stressed by the hon. Member, that against the will of the community no personal law-should be touched. That point will be considered by the House. The hon. Member may go to his next point.

Sardar B. S. Man: Then coming to the marriage laws, here the present set of laws are very rigid. I may be permitted to quote here from no less an authority than my colleague here. Dr. Tek Chand, who has been a distinguished Judge. He has dealt with this point in his own lucid and clear fashion. And let me also add, that this quotation is from one who is not a Sikh himself, nor an agriculturist—a non-agriculturist—but one who is well acquainted with laws and with the Sikh laws and the customs and practices in the Punjab. Well, this is what he says:

" It is well-known that *Jats*, specially Sikh *Jats* hold very liberal views on questions relating to marriage, and even at the height of the Brahmanical supremacy, they did not show much inclination to be bound by the cast-iron rules laid down in the later Hindu *Smritis* interdicting marriage outside the caste, and prescribing elaborate ritual for the performance of the marriage ceremony. Among them (*Jats*), the re-marriage of widows has all along existed commonly, and *chadar-andazi* in which the ceremonial has been reduced to the very minimum is one of the recognised forms of marriage."

And this is the view held by a learned Judge who was also a member of the Select Committee, and he has attached a minute of dissent on exactly this same point and on these same lines, that if you were to agree to only prescribed forms of marriages which are not sought to be introduced in this Hindu Code Bill, then you will be taking away from its orbit many forms of marriages which are customary and prevalent among the Sikhs in the Punjab. There is the *Kareva* marriage, which is not a sacramental marriage. That is

common in the Punjab.

Dr. Ambedkar: What marriage?

Sardar B. S. Man: *Kareva* marriage, where the man and the woman, without calling anyone, with no priest, learned or otherwise, without going through any ritual, without going round the *Granth Saheb* or the fire, simply sit together and have a *chadar* thrown over them and that constitutes the marriage. *Chadar-andazi* also means the same thing.

Shri Amolakh Chand (Uttar Pradesh) : Is it a *dharmic* marriage ?

Sardar B. S. Man : No, for the definition of *dharma* changes from time to time. Manu had his definition of *dharma* and there is another definition of *dharma* by Dr. Ambedkar. In this rapidly changing definition of *dharma*, I would rather not seek protection under such a *dharma*, but stick to my secular law which is quite clear to me and which I have been practising for long.

Shri Amolakh Chand: Are the children legitimate?

Sardar B. S. Man : Quite.

I am conscious of the retort of Dr. Ambedkar that he made in his speech last time. He says that when the people of the Punjab talk of marriage, they talk of many other things which.....

Mr. Deputy Speaker: I may point out that clause 8 and other clauses or forms of marriage are not necessarily applicable to the hon. Member. The Sikh community may have customs that bring about the relationship of marriage and these alone will be necessary. Why should we labour that point any further ?

Sardar B. S. Man: My difficulty is, reading his last speech. I find that Dr. Ambedkar has said that *Kareva* marriages will not be permitted.

Then there is clause 8 about other rituals. I may give yet another case where there is neither this *Kareva* marriage nor a sacramental one, but which is still in practice.

Mr. Deputy Speaker: Whatever may be the form of the marriage— may be the covering by a cloth and all that, that is not prevented here.

Sardar B. S. Man: If you will kindly permit me. Sir, I will make my point clear. In this form of marriage, they do not go through any ritual, nor even the flimsy ceremony of putting a *chadar*. If the man and woman have lived long enough in the village as to lead the village community to believe that they are husband and wife, irrespective of the fact that there was no ceremony, they should be taken as married husband and wife. There have been judicial decisions to this effect.

Mr. Deputy Speaker: Even for that there is a presumption under the Evidence Act.

Sardar B. S. Man: No, Sir. I beg to differ from you. Sir, on that legal point. They will not recognise it, if such a marriage does not come either under the definition of sacramental marriage or any other rites and rituals. The emphasis there is upon customary rites. One must have certain rites.

Mr. Deputy Speaker: How long should they live together?

Sardar B. S. Man : There is a decided case. Again, Dr. Tek Chand says:

" Indeed, the *Rivaj-e-ams* of the districts and the records of the cases decided judicially are full of instances in which mere cohabitation as man and wife for a long period without any strict matrimonial ceremony, has been considered sufficient to validate the marriage."

That is the state of the law in the Punjab. As regards these marriages where the man and woman have lived together for a long time.....

Mr. Deputy Speaker: What is the length of the time?

Sardar B. S. Man: In cases it was decided as seven years, in certain others as 20 and there are cases where it was decided as four or five years also. The validity of the marriage is judged by their day-to-day conduct in village community and not by certain ceremonies. But this form of marriage is not recognised by Dr. Ambedkar. He says " I will not permit this sort of immorality ". He calls it " marriages made easy ". It may be easy for me but I am not going to respect certain empty rituals .The sanctity of a marriage must be the attachment of the parties to it and their mutual conduct. It is immaterial whether certain rituals have been performed or not.

Rev. D'Souza (Madras): On a point of information, may I know whether in those cases the conditions requisite to validate the marriage were there or whether the mere fact of cohabitation was recognised, even if there was a previous marriage of one of the parties?

Sardar B. S. Man: I shall come to that later. I am only talking about forms of marriage.

Mr. Deputy Speaker: The hon. Member has not appreciated the position. The point is when a marriage is presumed, there must be conditions regarding propinquity or that it does not contravene prohibited degrees or that the woman is not already a married woman. Is it an instance of a married woman living with another man who becomes her husband? All the pre-requisites of marriage must be there: mere cohabitation is not enough.

Sardar B. S. Man: Under the general law, if the other conditions are not there the courts will interfere. That is not within the scope of this Bill.

Mr. Deputy Speaker: This refers to forms of marriage. Even the simple marriage where the bride and bridegroom sit together and a cloth is thrown over them is covered by this Bill and it is allowed. Even if that cloth is thrown away in the ceremony it is allowed. I do not know whether the hon. Member wants to press the proposition that a marriage should be valid whatever might be the degree of prohibition.

Sardar B. S. Man: If a certain custom is barbaric or against public conscience or public morality, I will not for one moment accept that custom. You are giving two forms of marriage, *dharmic* and civil. I am giving you instances of other forms of marriage. You have been kind enough in your interpretation to say that *Kareva* marriages will be included. But undoubtedly

certain rituals or rites are involved. I consulted others about marriages where there is no ceremony at all and where the man and woman merely live together long as husband and wife. The question was whether she was already a married woman and her husband was alive. Even if the husband was alive, the fact of separation was there and if she was still the wife of another man, then it would be an offence punishable under the ordinary law. The question is about marriages which are presumed to be valid even when there are no ceremonies nor rituals but a prohibition is sought to be introduced in that regard here. In the Punjab people do marry cousins.

Mr. Deputy Speaker: This does not abrogate the provisions of the Evidence Act and this is not inconsistent with that clause of the Act, namely that a man and woman living together was sufficient proof of marriage.

Sardar B. S. Man: After the promulgation of this law, doubts will be expressed by the courts about the validity of such marriages and the only relief given is that the marriage shall be registered. If the Law Minister says that even such marriages, which were not performed strictly but by virtue of the parties living together for a long period and their mutual conduct, they will be considered as husband and wife and will not be forced to go to a registrar to register their marriage, then my apprehensions will be removed.

Shri Tyagi: Both the parties must be willing.

Sardar B. S. Man: Of course, you must have a willing wife and husband. *(Interruption)* My friend Prof. Yashwant Rai asks whether such cases are very common among the *Jat* sikhs. They are common among them along with the Scheduled Castes and specially his own particular caste in the Punjab.

The idea of the present Bill is codification. Codification presupposes the existence of certain laws. If we are honest and want to proceed with the codification, the existing laws should be included there. But this codification under the present Bill is not only a codification of existing laws but so far as the Sikhs and the agriculturists of the Punjab are concerned it is an exclusion of their laws (*An Hon. Member:* Modification) or modification to such an extent that the original is completely lost that it is altogether alien and in many respects obnoxious to us and is thrust down our throats. Voltaire said:

" That the more vast a State is in size and composed of different peoples, the more difficult it becomes to unite all together by one and the same jurisprudence."

Only two days ago, the Prime Minister replying to a question why 11 A.M. there was no national dress in India said that in a vast country which stretches from the borders of Central Asia to KanyaKumari in the south, different people are used to different customs and it is very difficult to have one national dress. What applies to physical clothes applies equally to legal clothes—legal clothes which are sought to be tailored by Dr. Ambedkar. When a similar attempt was made before, considering the inadvisability of such a thing, it was given up. The Punjab Laws Act has almost been a Bible

for us, incorporating the principle of customary laws : the present form of the law which rules and holds the field is section 5 of the Act. Mind you, for so long a time as from 1872 we had had this law in operation and now suddenly at the fag end of the session, when we have not even comprehended the exact consequences of this not very revolutionary, but a completely novel and retrograde law, we are called upon to accept it. I for one have failed to comprehend it because my structure of society has been built upon pretty good customs which have held the field for so long, in regard to succession, property of females, marriage, divorce, dowry and so on. It contains every conceivable item of legislation. It says:

" Any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority shall be the customary law."

When on that occasion such an attempt was being made, another person as intelligent as Dr. Ambedkar, Sir George Campbell, who was then in charge of Law, made these observations which are applicable even today. The bill sought to lay down that Hindu Law and Muslim Law should be applicable to the parties concerned. The amendment was successfully introduced and hence the present law, that is section 5 of the 1872, Act based on that amendment, namely that the Hindu Law or the Muslim Law will be applied only in the absence of customs. Sir George Campbell said :

" If the Council would accept the amendment of which he had given notice, it was his impression that a great part of the objections to the Bill would be removed..... If enacted that the Muhammadan Law in cases, where the parties were Muhammadans and the Hindu Law in cases where the parties were Hindus, should form the rule of decision, except where the law had been altered, or abolished by legislative enactment, or was opposed to the provisions of the Act. He was quite willing to admit that certain simple rules, excepted from the Hindu and Muhammadan Law had to a certain extent had force in the Punjab ; but it appeared to him that a section of this kind would import into the Punjab, not the simple law of the Province but the whole of the complications of the written Hindu and Muhammadan Laws and the whole of the voluminous case law comprehended in the decisions of the Courts all over the country. That he regarded with the gravest apprehension. He should so regard it, not only because it would open a wide door for lawyers, but because it was not the law of the Punjab. Not one out of ten—perhaps not one out of a hundred persons in the Punjab was governed by the strict provisions of the Hindu and Muhammadan Law."

An attempt was made then also to codify but may I say that codification makes the law rigid whereas custom is not rigid ? Codification and legal enactments come from the top whereas customs represent the living conditions and the wisdom of the community. Customary law owes its

development and its strength to the fact that it comes from the community down below and grows upwards ; it is not reactionary as enacted law is, which restricts growth. Whereas the enacted law restricts growth, the customary law imbibes the best points and the practicability of the situation.

I will finish by saying that those who believe in the present sort of codification should be alive to the dangers of such a thing, the effect of which, is always to hinder the development, independence of judgement and independence of will of the communities, which vary according to the varying needs and the spirit of the people. I say, with all due respect to Dr. Ambedkar's ability to fashion out clothes, legal clothes—a sort of *Amritdhara* which will suit every disease from the south to the north—with all due respect to him, I beg to say that the clothes that he is trying to fashion out and tailor will be either too loose for southerners or be too tight for the northerners. It is much better that he should look to my size—look at the size of the society and its needs—and fashion and tailor the clothes accordingly and not give me ready-made clothes, ready-made medicines, a sort of *Amritdhara* for every disease. I request that no attempt should be made upon me as a Sikh to foist any law which is alien and repugnant to my spirit. I for one will not accept it, will not at any rate respect it because I have not respected the ancient Brahmins and much less shall I respect any modern Brahmins.

Pandit Malaviya: I have not so far taken any time of this House at any stage with regard to the Hindu Code Bill. I had been hoping all this time that the evil day would never come when we would be faced with the need of seriously applying ourselves to a proposal of the nature that is before us. I had known, and many of us had known, the intense desire and keenness of some people in this House and outside, it to have the Code enacted, but we had somehow felt that the obvious could be seen, that the preponderating public opinion throughout the length and breadth of this land would not be ignored, and even while the idea was being toyed with, no serious attempt would be made to put on the statute book a Bill which should affect the very foundations and the entire fabric of the society of the people of this land, in the haphazard manner in which it has been proposed to be done. People have been agitating in this country either for one view or the other and many who have felt distressed over the prospect of such a law being enacted have been doing what they could to draw the Attention of the Government to the widespread resentment and dissatisfaction against it. But personally, I have not once stood up anywhere on a public platform, not once have I tried to take part in any such agitation, in the hope and faith that a thing so wrong in principle, so atrocious in details and so uncalled for in expediency would never come up seriously before the House. But one lives and learns and I am now faced with the spectacle that in Parliament which is now on the last lap of its journey, a controversial measure which is going to affect the lives of more than 300 million people is going to be taken up and an attempt is going to be

made to enact, it and to put it on the statute book to the teeth of fierce opposition to it. I do not say that there is nobody in this country who supports the principle of this Bill (*Pandit Maitra* : Very few). I do not wish to say that there are not people who are honestly of the opinion that it is in the interests of society that such a law should be enacted. I have no quarrel with them. I am a Hindu and intolerance in any shape or form—intellectual or ideological—does not come to me. If, therefore, there are people in this country who feel that a measure of this nature or that a measure of even a more revolutionary nature should be applied to society, I may not agree with them—I may regret their opinion—but I can have no quarrel with them. I will, therefore, not take the position that there is no one in this country who wants this Bill. But it is obvious and it is something which only those can fail to see who would not see, that by far the largest majority of the people are not only not in favour of this Bill.....

Some Hon. Members: Question.

Pandit Malaviya:but are feeling seriously disturbed over it. They are today nonplussed and do not know what they should do in the face of the danger of such an enactment being made. (*Interruption*). Some friends of mine, tamely and in a parrot-like manner, probably by the force of habit, go on saying 'question'. I challenge them in all humanity to come and question my statement anywhere in this country. I have expressed the opinion in a meeting of the Congress Party Members of this Parliament at another place that in a matter of such universal importance, even if it be not legally wrong to make any enactment in this way, it is the height of moral injustice that we should take up such a matter without giving the amplest possible opportunity to those who are affected by it to express themselves upon the issue. I have said that in a matter of this nature, the very minimum that we can expect should be that the issue should be put before the electorate at a General Election or that indeed a referendum should be allowed to be taken upon it.

Shri Bharati : On monogamy ?

Pandit Malaviya: My esteemed friend Shri Bharati has obviously one and only one stale card to play on all occasions, right or wrong, relevant or irrelevant. I shall come to that card in due course and shall show what value that hand of his has. But the interruption by the word ' monogamy ' is not going to take away from my argument that in this matter the only right course for us to follow is that we should have a referendum in this land to allow people to express themselves on this issue and then if we find that there is even a fair minority— I go to that length; my challenge is not couched in any spirit of doubt or fear—I say that if as a result of a referendum even a substantial minority of the people are in favour of such a measure, by all means let us sit down seriously to the task of framing it. If that be not possible. I would ask my hon. friends who question my statement to persuade the Government of the day and the law Minister of the day to allow half a

dozen people to resign their seats—1 am prepared to be one of them—and let us have bye-elections in four weeks' time distinctly on the issue of this Code.....

Shri Bharati : On monogamy ?

Pandit Malaviya:and if out of those six even in a few constituencies in those bye-elections the protagonists of the Hindu Code Bill get returned...

An Hon. Member: In north India?

Pandit Malaviya: Anywhere in the whole country—if they get returned, then I shall be prepared to withdraw my opposition.

Shri Munavalli (Bombay) : Challenge accepted.

Mr. Deputy Speaker: There are two sides to the picture. Let him proceed.

Pandit Malaviya: I do not mind the interruption. Words are of two types. One is words which are mere sound; the other is words which have a meaning and when any Member says ' Challenge accepted ' I would wish he meant that and not merely created the sound.

Shri Munavalli : I mean it.

Pandit Malaviya: My request is this. Let the government, let the Law Minister, put the Bill to that test and if they are willing to do that, then I am willing to propose—and I hope other Members also who feel like me will be willing to agree—that we should have a session even before the elections for a week, after the results of those bye-elections are known, to work in accordance with the results. But the Members who say that they accept this challenge say it, if I may say so without meaning any disrespect, knowing that they will have no occasion to be put to the test.. The only way in which we could decide about this matter is by one of these courses. If we are not going to do that, then I do not know how to accept the questioning of my statement that by far the largest majority of the people in this land are entirely opposed to the provisions of this Bill. (*An Hon. Member: Question.*) And when I say this, I am not referring merely to those people who are called " orthodox ", but I am referring even to the most advanced of the advanced people of this country, people who find themselves weak and wanting in the strength to stick to the restrictions which time and experience of the elders of this nation have imposed upon us, who wish to have the easy way of life, who wish to have the good of both the worlds for themselves, who wish to remove restrictions and restraints which have descended through the ages, through the millennia that have gone before us reaching back into the dim unknown past of human history; the traditions, the culture, the life, the ideology, the principles of the one race which can claim with pride that it has had a continuity of that tradition from time immemorial. Those gentlemen today are impatient and I wish to submit that even from their point of view, from the point of view of even those who are impatient of even the existing restrictions, who would rather liken our society to an aping of some other society somewhere else,

irrespective of the suitability or otherwise of such application to our particular genius; even to them this Bill cannot be acceptable. It is on that basis that I make the claim that by far the large majority of people in this country are opposed to it. The orthodox people, those who have their roots in the traditions of old, are upset over it. But those who have a certain amount of social liberty.....

Dr. M. M. Das : On a point of order. The hon. Member is only repeating what has been said *ad nauseam* in this House. He has no new argument; he is only repeating what other Members have said.

Pandit Malaviya: I had heard that in the case of a certain type of mankind, which is often under the influence of a certain intoxicating habit, even some of the best victuals placed before him bring him nausea! I am not surprised at my hon. friend!

Shri Bharati : Will it not facilitate clarity of understanding if the hon. Member confines his remarks only to the subject under discussion, namely, marriage and divorce ?

Pandit Malaviya: I have probably not the clarity and the ability of my hon. friend Mr. Bharati.

Mr. Deputy Speaker: I myself wanted to suggest to the hon. Member that now that the scope is limited to marriage and divorce, his observations may be confined to those. The hon. Member may feel that the points made by him may not have been put as forcibly as he is doing at present. Anyhow some of them have been covered: he need not go into them at great length and may confine his observations to points, which have not been touched.

Shri R. K. Chaudhari: I would respectfully like to point out that even if there are repetitions, we should like to know the opinion of a distinguished person like Pandit Malaviya.

Dr. M. M. Das: On a point of privilege—the hon. Member is making a distinction between one Member and another.

Pandit Malaviya: I lay no claim to that distinction : I do not think any hon. Member need be frightened by it.

Mr. Deputy Speaker: I expect this debate to conclude today ; let there not be any more interruptions.

Pandit Malaviya: I am grateful to you for your guidance. What I submit is that the Bill may have one clause in it relating to the social structure of the Hindus or may have a hundred clauses in it relating to the social structure. But if it is going to affect the social structure of the Hindus, nobody can proceed with the matter unless he discusses that social structure and the way that clause is going to affect it. Social structure cannot be taken piecemeal in watertight compartments. It is not practicable.

After the discussion that has gone on before, I have a feeling that it will not be quite possible and correct to take a lop-sided attitude about one particular matter alone and leave the general aspect out. But I might assure you. Sir,

that I shall throughout be guided by yourself and if at any stage you should think that I should not carry on with any particular argument that I may be making, I shall at once obey you.

It has been said that this Bill will now be confined to the two items of marriage and divorce. As the Hindu society stands, its entire structure rests upon the foundation of marriage. There is nothing in Hindu society which can be separated as unconnected with the marriage system of the Hindus. It is, therefore, not possible to discuss the marriage section of the Hindu society—without referring to the general aspect of the society as a whole. Whatever I was saying applies directly to the item of marriage and divorce also. What I was saying was that it is therefore as much the orthodox section of the people who will be opposed to this measure as the others—about whom so much has been said by some hon. Members in this House yesterday and the day before, as forming nearly eighty per cent of the population, among whom it was said the very provisions which have been proposed in this Bill exist today. I have my own doubts if that is so. For the large majority of those people who have today facilities of divorce and easy marriage, the provisions of this Bill are going to make a world of difference. I am not expressing any opinion of my own on the merits of these proposals. I am merely mentioning that to the simple men living in the villages today, who have not had the opportunity and benefit of the same growth, intellectually, morally, emotionally and spiritually, as some other members of society, like my esteemed friend the Hon. the Law Minister, have had—to them the habit of restraint, the habit of a discrimination between the finer shades of the good and the better, the bad and the worse, does not come so normally and spontaneously in some matters at least as it does to the others. Hindu society has been divided into groups not with any inhuman or malicious object of injuring any section or doing any injustice to any section. I do not wish it to be misunderstood that I do not believe that injustice has been done to some sections of it. Injustice has been done, hardships have been inflicted, atrocious hardships have been inflicted, and there will be no reasonable man who will hold any brief for the same. But I am talking of the principles and the broad concept on which those divisions were based. They were not meant to injure, they were not meant to inflict any hardship.

Shri Munavalli : But what has been the effect ?

Pandit Malaviya: The effect will take me long to describe, because the effect has been varying from age to age and if my hon. friend will take the trouble of reading through the pages of history he will know them well enough for himself.

Mr. Deputy Speaker: But is a discussion on that point necessary for marriage and divorce?

Pandit Malaviya: What I was wishing to point out was that in the very nature of things we can only expect one thing from one individual and another

thing from another. If any abstruse point of law arises today, we can reasonably and legitimately request our learned Law Minister to put us wise on all aspects of it. You may not be able to get the same information and the same light from an ignoramus like myself. (*An Hon. Member*: No, no.) (*Another Hon. Member*: That is only humility.) There may be equally another thing about which another individual may be able to tell us many things but about which my esteemed and dear and learned friend Mr. Bharati might prove a complete ignoramus. In society there is a class of people to whom the real zest of life, the real zest of existence, the incidence of life from moment to moment, from hour to hour, from morning to evening and from evening to morning, is, if not the in-all and out-all, a very large portion of the totality of their existence. For them today's marriage and divorce laws have been framed with a view to simplicity and easy availability. A man can today, or a woman can today discard a marriage relation and take up another almost in the twinkling of an eye. Such people will have to wait for months, they will have to go through law courts, they will have to go through the entire gamut of procedure before they can do the same under the provisions in this bill. I am not expressing any opinion on the merits of the matter. I should personally feel happy at, and I should like to congratulate the Law Minister for having conceived that improvement, but I am talking of the practical effects. In the practical effect there will be murders in the villages.

Dr. Ambedkar: We have enough police.

Pandit Malaviya: For a man who is still in a large measure in the animal stage.....

Shrimati Renuka Ray: Question.

Pandit Malaviya: I do not say this in any sense of disrespect. I am only talking as a sociologist. If those men find new impediments put in their way, impediments to which they have not been used, to which they are not accustomed, and they find themselves thwarted in a tiresome manner, they may not have in themselves that much of restraint, they may not have in themselves that much of development and control that they should wait for the law, and society may be faced—among the eighty per cent of whom so much has been talked about—with an upheaval which is probably not even imagined today. Therefore, I said that this Bill is not only not welcome to those who, like me, would rather that the traditions which have come down from ages past should be respected and upheld, but even to those who are going to be affected by it in a much larger and more immediate measure. I may submit respectfully that some of the Members of this House who have been so loud and enthusiastic with regard to the provisions of the Bill have little in common with those people.

Dr. Ambedkar: Not even me.

Pandit Malaviya: Certainly not the Hon. Law Minister! The Hon. Law Minister has been likened, even profanely, to no less a sage than Manu

himself and I am reminded of a *shloka*. (*Interruption*) Somebody asks me why I am jealous. Unfortunately or fortunately I am not so built that I should have the privilege of being jealous towards the Hon. Law Minister.

Dr. Ambedkar: How can a Brahman be jealous of an untouchable?

Pandit Malaviya: Better tell them ! I am reminded of a *shloka* where Kumbhakama asks Ravana (*Interruption*). If hon. Members will just bear what that *shloka* says, probably they will feel slightly better human beings than before. Kumbhakama asks Ravana why in his attempt to win over Sita's mind, with all his demoniac powers of changing his appearance, he does not take the shape of Rama when going to her, and Ravana says: " The trouble is, the moment I take the shape of Rama or think of him, the mere association with the thought of Rama makes it impossible for any evil thought to come into my mind ! (Hear, hear). (*Hon. Members : Repeat the shloka.*) I will repeat many *shlokas* if my hon. friends will get me the time for it. Similarly, about Manu. I was saying that if we can expect a certain thing from members of this House—of course, there can be no possibility of their needing to go through divorce in matter of minutes—we may not hope that the same thing will be done by those 80 per cent of people also. Therefore, we should be cautious in our approach to this matter. If anybody can controvert that aspect of things. I would like to hear him do so.

I, therefore, repeat that this Bill is not only disapproved by the orthodox sections of the people but also by far the largest majority of the inhabitants of this land. {*Some hon. Members:* No. No.) Somebody says, " For other reasons than what you have stated ". May be, but the fact remains, that whatever the reasons it is not approved by the large majority of the people.

I shall come to the Bill itself. It has been said that as only Part II of the Bill is now to be proceeded with, it is not necessary now that this Bill should be called the Hindu Code Bill. Indeed, irrespective of the fact whether the other Parts were excluded from it or not, personally, I should have had a little less objection to the Bill if it had not been called the Hindu Code Bill. In our Constitution we have given the name " India, that is Bharat " to our country. Why was this Bill not called the Indian Code " ? I am not going into that question that it should apply to everybody. I am not concerning myself with that. I am not saying this on that basis. But this country being named " India ", if this code, had been called the " Indian Code ", it would have had a different meaning and import. Once we say the " Hindu Code " the entire picture of what that word denotes comes to the mind. We must, therefore, know and keep into view what the word " Hindu " means. It is a difficult word to explain in a sentence. But if there is one feature in Hinduism which one might mention as of outstanding pre-eminence, it is the practically limitless tolerance and catholicity of that system. Our Prime Minister, Pandit Jawaharlal Nehru, has himself talked of Hinduism and has said that it is probably best described by saying that it rests on the principle of live and let

live. We have among the Hindus the most diametrically opposed viewpoints. We have in the highest caterie of sacred literature and philosophical schools the six *Darshanas*, one of which sparkles with the brilliance of the razor-sharp incision and acumen of the intellect of supermen and giants like Jaimini. Shankar and Kumarila—1 do not wish to use any adjectives of praise for them because it will be difficult to find suitable words—and on the other hand, it contains another system which is so obtuse, which is so crude, to say nothing worse, that it would refuse to see or understand anything which is not strictly before its physical eyes. The poor Charvaka, with the palm of his hand up before him, would refuse to understand that the back side of his hand also exists because it would not be *pratyaksha*. . . .

Dr. M. M. Das: On a point of order, we have not come here to hear lectures on Hindu philosophy and ancient *rishis*. . . .

Mr. Deputy Speaker: Order, order. I find the hon. Member is very impatient. He must have consideration for the other side of the view. I never expected that the hon. Member would go on interrupting. I repeatedly say that this is a contentious matter and we are allowing sufficient time. I am also alive to the fact that a number of hon. Members have spoken. I am not concluding the debate now. The less the number of interruptions the greater the chance that he will finish it early. Otherwise, he will demand another day.

Pandit Malaviya: I was only pointing out the wide diversity and catholicity of philosophical and metaphysical thought prevalent among the Hindus. I wish there were no need at all for anybody to talk of the philosophical side of things. I wish one could feel that it was unnecessary. But, from such remarks it seems it is unfortunately necessary. What I was mentioning was that even in the *Darshanas*, while we have the pure *Vedant* on the one hand, we have the drunken reveller of a Charvaka philosopher, indulging in the five *makaras* ! I shall not go into those five *makaras*.....

Some Hon. Members: Go on. go on.

Pandit Malaviya:because apart from my own reasons of decency, probably I may take it that some of even those Members who may not be deeply interested in philosophical thought might be familiar with them!

Mr. Deputy Speaker: How are they useful for the discussion on this subject ?

Pandit Malaviya: What I was trying to point out was.....

Dr. Ambedkar: I submit the *makaras* are very useful.

Mr. Deputy Speaker: Will this in any way corrupt the *makaras* ?

Pandit Malaviya: We have that diversity even in the principal *Darshanas*. Among them, again, we have the *Astik Darshanas* and the *Nastik Darshanas*. We have *Darshanas* which have talked of the monotheistic principle of *Parabrahma* and *Brahma* and *Jiva* and also which have talked of the atheistic philosophy of *No-Brahma* and *No-Veda* and *No-God*. We have in other spheres also equally diverse opinions and diverse state of things existing.

There are some people today who find it fashionable to remind us that there were certain *rishis* and other among the Hindus who were beefeaters. Side by side with that, Hinduism is replete with a universal reverential regard for the cow. We have in the Hindu society youthful marriages; we have also in the Hindu society youthful *sanyasis*. We have in the Hindu society the most austere and difficult to imagine *tapas*; we have also in the Hindu society the most luxurious and lavish enjoyment of the senses. We have in the Hindu society the Brahman; we have the *chandala* ; not the Chandala for whom we have only restrictions and impositions, but the *chandala* for whom rights and privileges have been prescribed, just as for the Brahmans (*Interruption*).

Mr. Deputy Speaker: It is an offence hereafter under the Constitution to call any person a *chandala* or an untouchable.

Pandit Malaviya: There are so many speakers around all at once, that I am unable to hear you. Sir.

Mr. Deputy Speaker: Apart from any constitutional aspect, reference to *chandala* is no longer advisable. It has been made an offence under the Constitution.

Dr. Deshmukh: He is only referring to history.

Mr. Deputy Speaker: There may be some history, but all history is not very good to mention. Let us forget some history.

Pandit Malaviya: I was referring to it not as to an individual, but as to a system in the past. However, I will abide by what you have said.

Dr. Ambedkar: Why should you?

Pandit Malaviya: The hon. Law-Minister asks, why I should. Only because I am a law-abiding Member and not the other name that I had been mentioning.

I was saying that in Hindu society we have had that variety of things existing side by side in honour and in peace. That has been the great feature of Hinduism. But that catholicity and that tolerance was possible only because there were some basic principles, fundamentals which went to form the root of all things which were first settled and ordained, and which have been maintained through the ages without question or dispute; not narrow sectarian dogmas or rituals, nor any controversial things or rules, but certain basic fundamental principles which were considered as *sine qua non* of the continued, stable and smooth existence of society. These principles may be called by any name; but they remain the eternal bedrock upon which any healthy society must rest. In this country, the name given to these principles was *sanatana* : *sanatana* not meaning, unfortunately, as a learned speaker said yesterday, that which is always changing and *nitya nootana*, but as something which has always existed. Therefore, if we undertake the task of making any changes in the structure of Hindu society, we must be careful that, tamper as much as we might with the outward forms and paraphernalia, with the leaves and branches, we do not apply the axe to the root of the tree

itself ; that we do not disturb and that we do not uproot the fundamentals, the basic principles upon which society has been based, and which have carried it through the ravages of time as nothing else has carried any other society known to man in the world. Therefore, we must first understand what those basic principles are.

12 NOON

I was slightly taken aback when I heard it said by no less than three august personages who go to form the Government of this country today, that the provisions contained in the proposed Hindu Code Bill are in accordance with what is found in the Hindu *Shastras*. I have also heard it said that a profound study has been made of those *Shastras* in order that this Bill might be put up in this form. One would naturally hesitate to cross swords with men of so learned a disposition. But the Hindu *Shastras* have been the property of the world for the ages. Many people have read them or can read them. With the very limited knowledge that I am privileged to have of them, it has not been possible for me to find justification for that statement so far. I would, therefore, suggest that if it is the claim of the Government that they are basing the Hindu Code Bill upon the sanctions contained in the Hindu *Shastras*, then we should proceed on that premise. It will be different, however, if a wider stand is taken and it is said that it is not the Hindu *Shastras*, it is not the sanctions contained in them, but it is the wisdom and the whim and fancy of the framers of this Bill, it is the inclinations and the desires of those who are at its back, which have been the determining factors in the preparation of its clauses and details. To the best of my knowledge, no such statement has been made so far. I will, therefore, proceed on the assumption that the claim remains that the Bill and its provisions are based on the Hindu *Shastras*. If that is so, I would like very much to get a clarification from the Law Minister as to how that point is to be determined, as to what is said on a particular point in the Hindu *Shastras* and what the meaning of that statement in the *Shastras* is. I know what I am saying must mean mere waste of time for a man like the learned Law Minister, because, I have no doubt, that he is familiar with the meaning of what I am saying. But we the Members of this Parliament are here to legislate on a vital issue, and if we are going to legislate on a matter of such universal importance, and if we are going to do it on the basis of a certain thesis, namely, that it is being done in accordance with the tenets of Hindu *Shastras*. I feel that it is our duty that we the Members of this House should then keep in mind the rules, the methods, and the recognised procedure by which the meanings of the *Shastras* and their words are interpreted. The *Mimansa* applies itself to that high purpose, because in a society like that of the Hindus, where the law came not from a Government or from a Minister, howsoever high and mighty.....

Shri Sidhva (Madhya Pradesh): Please address the Chair.

Pandit Malaviya: My hon. friend Shri Sidhva asks me to address the Chair. I have been doing nothing else. I wish Mr. Sidhva would not forget so easily.

The Members of this House should know that in a society like that of the Hindus where everything has been based—for, God only know how many millions and millions of years, or thousands and thousands of years—upon certain texts coming down through the ages ; where we had not the printing presses or the printing paper, where everything had to be committed to memory and had to be passed down from the teacher to the pupil and from the sire to the son, where everything depend upon the correct pronunciation and intonation and upon the correct text and upon the correct interpretation of old and ancient words and *mantras*, where new codes and new treatises, not printed on paper, but in the minds and memories of men came up from time to time and had to be assigned their right importance and place; in such a society, disaster would have followed if the most minute, if the most exhaustive and positive rules had not been laid down for the interpretation of those texts. And in the *Mimansa* we have it laid down how any text of the *Srutis* or the *Smritis* should be interpreted. It is also laid down that the meaning of the law cannot be known merely by looking at a sentence at one place. So many tests—proving tests— have to be applied to it.

[PANDIT THAKUR DAS BHARGAVA IN THE Chair]

If, therefore, it is the claim of the government that the Hindu Code Bill is based on principles and tenets contained in the Hindu *Shastras*, my earnest request is that we should carefully and according to the rules, examine the various provisions and then find out if they violate what is contained or laid down in the *Shastras* or not. My humble submission is that they are not only not in conformity with Hindu *Shastras*, but go diametrically against them. *(Interruption)* Somebody is saying at my back that I am now expanding. I wish my friend would understand that if I wished to expand these ideas it would take days to finish.

Shri Munavalli : That is your intention also.

Pandit Malaviya: We have known of the concept of omniscience. I find that there is a new phenomenon of it here, who knows the minds of others.

Shri Munavalli: Certainly.

Pandit Malaviya: I congratulate the hon. Member. I wish to submit that I am trying to confine myself as rigidly as possible to the shortest possible limit. I am saying this with a sense of responsibility. Let any Member of this House who would like to have an exhaustive and expanded exposition of the points I have made, let him do me the honour of coming to me after this sitting and I will then make him see how much there is to say, how much there is to study, and ponder over each one of the points that I am only briefly mentioning here.

I was submitting that if we have to go by the *Shastras* the whole matter simplifies itself, because there will then be no room for any difference or

controversy. If the two parties to a case have agreed upon a measuring rod and there is no dispute about it, it should be easy then for any set of normal people to take up that yardstick and measure the cloth to the mutual satisfaction of both. If it is agreed that it is on the basis of the *Shastras* that we are going to enact this law, according to the rules of interpretation so clearly laid down, it should be easy for anybody and the hon. Law Minister to sit down, go through clause by clause and determine. (*Interruption*) I see that the Hon. Law Minister has a very clear vision. The Law Minister or any other member or even myself may have any view of a matter. But when the hon. Law Minister and others agree that there is a yardstick by which a piece of cloth has to be measured, there can be no room for any difference or controversy. (*Interruption*). I have already mentioned but obviously it has not yet been sufficiently mentioned for my friend Mr. Bharati that there is a yardstick, which has come down to us from the ages, (*Shri Bharati: The measurement differs so widely*) according to which the interpretation of the sacred texts has to be made. Shri Bharati : The difference in the yardstick is one inch to a mile. Pandit Malaviya : My friend Mr. Bharati says that the difference between the yardsticks is one inch to a mile. I do not know if I can say anything about that remark, because it carries in itself the visible and the obvious, that my esteemed friend is altogether unaware of the nature of the yardstick I have mentioned. There would be no question of any difference, not even one in one millionth of a millimetre. Therefore, if that can be agreed upon, I think, all controversy on this matter would end and there would be no need for us to say anything more at this stage. We can then easily leave it to the hon. Minister. I can place the entire matter in his hands not only as the umpire or the judge for those who are in favour of the Code but also for those who, like me, want him to go through the clauses, item, by item according to the text of the *Shastras*, interpret them through the *Mimansa* and apply them to the provisions of this Code and say if they do not militate against them. If he says that I shall be satisfied and I will offer no further opposition . I do not think anything more fair or reasonable could be said. If however, that cannot be done, the least we could ask for is that the claim that the Hindu Code Bill contains provisions which are all based upon what is contained in the *Shastras*, should be completely given up and withdrawn, so that the millions of our people who may not have the opportunity of being critical enough to examine the basis of such statements may not be misled by such entirely wrong and misleading statements and they may not fall into that dangerous pit. Probably the Bill may have been prepared innocently, but it has within it the potentialities for untold and immeasurable mischief. If that also cannot be done there can be no other way for Members of this House or those of them who feel like me, but to examine all these proposals in extensive detail in the light of what is said in the *Shastras* with regard to them. It will be a long process, because, if the claim is made that what is stated is according to what

is laid down elsewhere, it can only be given up either by mutual agreement or by the weight of facts as distinct from opinions; and establishing those facts can only mean that on every clause and every sub-clause, on every subject and almost on every word, this House should have the opportunity and the benefit of having its attention drawn to the relevant texts in the wide range of *Shastras* and law books of the Hindus. I do not know if that will be considered possible: I have no doubt it must be permissible; but I do not know whether that will be considered possible and practicable. I would therefore beg the Government not merely in the interest of fairness and justice towards the subject which is before us and towards the people who are affected by it, but indeed in the interest of the progress of this Bill in this House, that they should re-examine their position on that point and either make up their minds to proclaim to the world that the Hindu Code is not based on the Hindu *Shastras* and does not care for what is laid down therein, and is the product of the wisdom and fancy of those who have prepared it; or, they should adopt the procedure which I have suggested, *viz.*, have a thorough and nonpartisan examination made of each of the clauses and then bring up before this Parliament only those which, it is incontrovertibly agreed, are in accordance with the *Shastras* that have prevailed since so long.

There are certain other difficulties also in this matter. This bill, it is now said, will confine itself only to the subjects of marriage and divorce. But my difficulty is that, that fact by itself does not make the slightest difference in the nature of this question. If there were any part of this Bill which was altogether uncontroversial and if that were taken up, I would understand that the same might have been allowed to go through this House without much difficulty or controversy. But can there be anything more fundamental, more controversial than the question of changing the laws of marriage among the Hindus? I submit it is not possible to think of anything more contentious. Somebody may say that the other parts of the Bill are more contentious—I am quite sure somebody else will equally emphatically say that the part relating to marriage and divorce is the most controversial. Therefore, the fact that it has been decided that the progress of this Bill will remain confined to these parts, does not make any change in the fundamental aspect of this question. We have therefore to be very cautious in proceeding with it. I mentioned that the vast bulk of the people are against it, but there is something even more fundamentally wrong in the situation. The Hon. Law Minister himself at one stage, when on a previous occasion this matter was before this House, said in reply to an inquiry by an hon. Member that it was not intended at that time that his Bill should apply to the people of what was then called the Indian States. And in his usual, careful and accurate manner he said that if at any time the States came into the picture, the matter would have to be gone into entirety before it was taken *up*—or something to that effect; I am not quoting his words. Everyone knows that this Bill was not published in any Gazette of

those States. It was published in the Gazette of the Government of India, it was published in the Gazettes of some of the Provinces, but because there was not thought to be any occasion for it, it was not published in the Gazettes of any of the States. And the people of the States did not therefore find themselves called upon to consider the matter; in fact, they had no concern with it whatsoever. What has been the result? Today, by the fact of our new Constitution, all that territory forms part of the land and whatever is passed today is going to apply to the people of all those areas. Does anybody pause to consider the preposterous nature of the situation? One-third of this country—not a little portion here or a little portion there—but whole one-third of this vast country.....

Shri Munavalli: It is not so, because many States have already been merged in the provinces.

Pandit Malaviya: My friend says " It is not so, because many States have been merged in the provinces". I dare not controvert so wise a statement, but I thought that even before they were merged and surely since after their merger no publication of the Bill has been effected anywhere.

Shri Munavalli : Question.

Pandit Malaviya: My friend questions that statement. I think he is beyond me. One-third. I said and I repeat of this great sub-continent is going to be subjected to a law which is going to affect fundamentally the very foundations of their life and existence without their having had an opportunity to see what it is.

Shri Lakshmanan: (Travancore-Cochin.): May I point out that in some part of States the Bill was published—in Travancore-Cochin, for instance?

Shri Bharati: I wonder if the hon. Member knows about any of the other States also.

Pandit Malaviya: I do not belong to that school which refuses to see anything except the palm of its hand. I do not mind the interruptions because I know what I mean and I know what I am saying. I am not saying it merely because I wish to say something or because I should say things which would please anybody, but because I believe in what I say. No amount of interruption, no amount of cries of ' Question ' can dislodge the truth. If a thing is true and correct, then whatever anybody may say and these ' Questions ' only help to clarify matters.

Shri J. R. Kapoor: Interruptions are helpful.

Pandit Malaviya: Whether they are meant in a spirit of helpfulness or otherwise, I do not in the least degree mind them. If on a matter of such importance and gravity there are indeed any doubts in anyone's mind and if any questions suggest themselves to any Member, I feel, on the contrary, that the object, the very ideal, of a parliamentary system of legislation would be defeated if that Member did not have the opportunity to raise his doubt and to ask his question, and if anybody who is on his legs, does not attempt to reply

to his best ability to the question that is asked. I therefore do not object to interruptions.

Shri Radhelal Vyas : May I ask the hon. Member to enlighten us as to how the law of monogamy and divorce which is in force in Madras and Bombay has affected the Hindu society ?

Mr. Chairman: May I ask the hon. Member not to lose the thread of his argument and not to be misled by the interruptions ?

Pandit Malaviya: I am very grateful to you. Sir, and I assure you that I stand to no fear of being misled. I was saying that in all these States people have had no opportunity at all of knowing what this Bill is. It is possible for me to go into this point at great length, to go into the well known and universally accepted principles and methods of legislation and to point out the monstrous impropriety of such a state of things. But I believe that instead of doing that I should merely draw attention to that fact and hope that Government will still see how grave an injustice is being proposed to be done in that manner and would 'find out if they can yet undo it to some extent at least, if not wholly. It cannot be possible now, if the Bill is to be proceeded with immediately—as the Government have declared—for it to be circulated or published for the information of those people. I will, therefore, not waste time in suggesting that procedure.

I happen to have the privilege of having by my side a sister who is all the time helping me by murmuring something or the other into my ears.

Shrimati Renuka Ray: I was pointing out that this was the best speech in favour of bringing in the reforms contemplated in this Bill.

Shri Munavalli: I want to enlighten my friend over this matter because...

Sardar B. S. Man: It is now the time of the hon. Member who is already on his legs to enlighten the House.

Pandit Maitra: The hon. Member has raised a very important point that the Bill was not published in the States...

Mr. Chairman: I do not know why the hon. Member should advocate his cause.

Pandit Malaviya: In view of the fact that the Bill has not been published in the States and is now going to be applicable to them also in all probability, something should be done to redress that glaring injustice. How it can be done would probably be best devised by the hon. the Law Minister. As I said, it is no use making an impracticable, theoretical suggestion at a stage when it is not feasible. I, therefore, do not say that this Bill should now be published or circulated for their information. But, probably, we can devise some other way by which that difficulty might yet be overcome, at least to a degree. And I would suggest for the consideration of the Law Minister—not as one who is opposed to the Bill necessarily, but as one with whom, I think, he may find himself at one on this issue—that the people of such a vast portion of the country should not have a clear and legitimate grievance of that nature. I

would suggest to him to consider this proposition at least with respect to those States, if not for the rest. The amendment of which I have given notice and which I have moved says that this Bill should apply to anyone only after a referendum has been taken in the State to which he belongs and, in accordance with the result of that referendum, the Legislature of that State has decided that the Bill should apply thereto. I shall come to that in due course. But may I suggest now—whether that amendment of mine is accepted in its entirety or not—that the hon. the Law Minister might consider the propriety of providing in the Bill that at least with regard to the parts of the country which were then called the Indian States, where this Bill had not been published, this Bill should not come into force unless, after due publication and circulation, it has been considered in the Legislatures of those parts and the Legislatures have decided that it should apply to them. That will at least remove this glaring fault, the glaring omission which stares us in the face today.

Shrimati Renuka Ray : And let us have the tyranny of the Brahmanical society for the next thousand years !

Pandit Malaviya: My esteemed sister says " Let us have the tyranny of the Brahmanical society for the next thousand years ". I can only wish and pray that not for a thousand years but for eternity, not only my good sister but the whole world might rise to the level and concept of the Brahmanic ideal—the ideal which has always stood for fairness and justice to all, which has stood for the performance of duties and actions due to others rather than insistence upon the rights and privileges of its own, which has enjoined not a life of aggrandizement, not a life of self-interest, not a life of low thinking and low living, but a life of noble and lofty idealism and practical selflessness where the Brahman more than anyone else in society but indeed not only the Brahman but every member of society abnegates himself, ignores himself, allows himself to suffer that others may grow, may prosper and may live. I know that the beauty and the sublimity of that concept is lost upon some of my hon. friends. (*Hear, hear*). I hope and pray that society and mankind will yet be able to rise morally, socially, ethically, spiritually and ideologically where the Brahmana will be the true Brahmana and all members of society will rise to the level of that age! I am not ignoring the fact that the Brahmana has deteriorated as all others have.....

Shrimati Durgabai: In preaching and practice, both.

Shri R. K. Chaudhari: Why should the lady Member interrupt?

Pandit Malaviya: My sister there, except that we are born of different parents is like a real sister to me because we have both been born of the same institution. That sister of mine tells me that the Brahmana should rise high and lofty both in precept and practice. I wholeheartedly and with every fibre in me pray with her that it may be so, and indeed that it may be so with all others as well.

Dr. Ambedkar: In the meantime, let us have the Hindu Code.

Pandit Malaviya: If we can rise again to that pure and noble Brahmanic ideal, then the Hindu society will have no more of all its troubles and ills but will once again become the leader of mankind as it was at one time; not at the time when there was any injustice or tyranny by any section of society over any other but at a time when every member.....

Shrimati Renuka Ray: Remember it.

Pandit Malaviya: Of course I remember it, otherwise how should I say it. But it is Mrs. Renuka Ray who needs to know it and to remember it.

Shrimati Renuka Ray: You are talking about the Hindu society during the days of its decadence. Please remember the *Vedas* and the *Upanishadas*.

Mr. Chairman: May I request the hon. Member to proceed with his argument as he was proceeding before and not to answer these interruptions? Otherwise the main thread of his theme will be lost. I would request hon. Members not to interrupt the speaker.

Shrimati Durgabai: May I interrupt, Sir? Is not this Bill intended to bring the example of Rama to all men? Is not that a subject matter now?

Mr. Chairman: This is a very clear interruption.

Sardar B. S. Man: It is very dangerous nowadays to ignore interruptions from hon. lady Members.

Shrimati Durgabai: In the matter of interruption, there is no distinction between lady Members and others.

Pandit Malaviya: In the Brahman society the woman has been given the highest place. There is nothing higher than the mother.

Dr. M. M. Das: One man marrying 250 wives: Is that the dignity conferred on a woman?

Mr. Chairman: Order, order. Let the hon. Member proceed. **Pandit Maitra :** Which man has married 250 wives ?

Dr. M. M. Das : I am referring.....

Mr. Chairman: Order, order. No mutual wrangling; we must keep the decorum of the House.

Pandit Malaviya : To go back to where I was, I was therefore submitting that if nothing else could be done, we might at least have this measure made applicable to the areas which were previously called the Indian States. Only after that process has been gone through *viz. that* it has been published and circularised there and the Legislatures concerned have decided that it should apply to them.

There is yet another difficulty which I have. And that is, that when the Hindu Code was first framed, according to the Constitution which was in force in this country at that time, agricultural property was not a subject on which the Central legislature legislated. As a result, 90 per cent. or probably even more of the landed property in this country did not come under its jurisdiction.

[MR. DEPUTY SPEAKER IN THE CHAIR]

Now, agricultural property has also been put in the Concurrent List and this legislation, if passed, will apply to landed property also all over the country. The scope of this Bill, therefore, has been expanded almost 900 times over. As it stood before, it would have concerned only a very small fraction of the property in the nation.

Mr. Deputy Speaker: That is no longer the subject matter of this Bill, unless the hon. Member thinks that as a consequence of the marriage, the children will be entitled to that also.

Pandit Malaviya: I am at present talking of the application of the Bill and its import. I was pointing out.....

Mr. Deputy Speaker: The hon. Member evidently was not here. We have said that this Bill is confined to marriage and Divorce. Property, inheritance, succession are not gone into now, unless indirectly the hon. Member says that the consequence of marriage will be some offspring and they may be entitled to some landed property.

Pandit Malaviya: Sir, I have the same difficulty, which I had once before. So many speakers are about that I could not hear you!

Mr. Deputy Speaker: The property chapter and other parts are now excluded from the scope of the Bill. We confine ourselves to marriage and divorce alone. Therefore, the hon. Member need not dilate upon that matter now.

Pandit Malaviya: What I was submitting was not with regard to the nature of the provisions in respect of property. What I was submitting and another point which I had tried to make out before you came back was with regard to some of the very objectionable features and circumstances relating to the situation in which this Bill, is now being put before this House. And I was, therefore, pointing out that a very grave and fundamental change in the circumstances has occurred, namely, that when the Bill was first framed. It did not have any applicability to 90 per cent. of the extent of this land. But it will now have, on account of the adoption in the Constitution of a Concurrent List on which agricultural lands and property have been placed. ...

Mr. Deputy Speaker: The Bill is not pressed so far. It is now confined only to the part relating to marriage and divorce. There is enough time for hon. Members to consider when another Bill comes as to how it will affect agricultural land. Today we need not dilate upon that matter. Whatever might have been the change due to the agricultural lands being put in the Concurrent List, we are not concerned with that now.

Pandit Malaviya: Sir, I will obey your ruling or decision. But I wish to submit for your consideration what I have to say and I will do as you will direct me. If at any time any Bill including the clauses relating to agricultural property comes up, then of course, it will be time for us to discuss the details of the clauses of that Bill and to express our opinions upon them. But at this stage, as you have stated. Sir, I am not trying to express any opinion whatever upon

the question of the landed property in this country, or the methods of its disposition. I am not speaking on that subject. But what I wish to bring out is about the scope of the bill itself. Whatever may be its provisions, whether it is marriage, whether it is death, or whether it is anything else, it will somehow apply itself to all. I am trying to show with whom the provisions will come into compact. For instance, just before you returned to the Chair, I was arguing that the States in which the Bill had not been published should not be put under this Bill straightway, and there should at least be a provision that only after it has been published in the respective States should the respective legislatures be asked to decide upon it. Similarly, I beg to submit that what I was arguing was not the question of any landed property or any other property as such, but the nature of the applicability, the nature of the thing, what this Bill or any Bill of this nature, can now comprehend as against what it could comprehend before. Therefore, I shall confine myself to that aspect of the matter and not go into the question of property at all.

Mr. Deputy Speaker: The hon. Member has taken two hours and we have some other work also to do. I thought the hon. Member was concluding and I was anxious to call upon the hon. Law Minister to speak. Now, may I know how long the hon. Member is likely to take ? I may adjourn the half-an-hour discussion to some other day, if the hon. Member is likely to finish soon. We have another fifteen minutes left now.

Pandit Malaviya: Some of my hon. friends may laugh. Sir, but it is difficult for me to say how long I will take. I hope you will believe me,. Sir, that I have been trying not to dilate or to be expansive in my arguments. Some hon. friends have said that I was dilating. I can only say that if any one of them would do me the honour of meeting me outside the Chamber and letting me explain to him my view point about any one of the points which I am touching upon here, then he would know how much there is to be said on each one of these points, and how I am trying to confine myself only to the most essential things. Therefore.....

Mr. Deputy Speaker: May I know whether it is possible for the hon. Member to finish in another fifteen minutes ?

Pandit Malaviya: I do not think that will be possible. I may tell you. Sir, that I have got here a heap of notes and books, which I have not yet even once touched. I am saying this in all sincerity and I am trying to confine myself to the most essential things. If I wanted to take up each one of the points in great detail, it would be different. I am trying to confine myself to the essentials. Yet I feel so deeply and so strongly on this matter and the subject is so important and vast that I am afraid it will not be possible for me to finish today. But I am in your hands. Sir.

Mr. Deputy Speaker: How long does the hon. Member propose to take ?

Dr. Ambedkar: Five days.

Pandit Malaviya: The Law Minister says five days: I would not mind five

days.

Shri Sondhi (Punjab) : The challenge is accepted.

Shrimati Durgabai: May I suggest to my brother Member that his thesis may be printed and circulated and taken as read ?

Hon. Members: No. no.

Pandit Malaviya: When my hon. sister makes the Constitution of this country and also the rules of Parliament, then probably we shall have that procedure.

Sardar B. S. Man: That day is not far off.

Pandit Malaviya: I would not unnecessarily take too much time but I would not be able to finish today.

Mr. Deputy Speaker: Let me know how long he will take from now.

Dr. Ambedkar: If not five days five hours.

Pandit Malaviya: I have lots to say, I shall be entirely guided by you. If you will permit me I will leave the matter open to you. I am prepared to come to you and show you my material and leave it to you as the custodian of the privileges of all Members of the House to tell me how much time I should take.

Mr. Deputy Speaker: It is not my intention to curb or curtail the discussion on any point. Two hours have already been taken by the hon. Member and already we have discussed for six days. So far as the books and other references that the hon. Member has mentioned, they are for detailed consideration and he will not lose his opportunity. There are the other clauses on which he may bring to bear his knowledge of those tracts, which he has. So far as the present occasion is concerned half an hour more should be sufficient to the hon. Member.

Pandit Malaviya: I fear that may not suffice. If you will permit me I will put it in another way; I shall try to be as brief as possible. If you would rather that I cut short as much as possible I will devote my self to two points, namely marriage and divorce tomorrow and finish as quickly as I can. It may be that I will need..

Dr. Ambedkar: Five hours.

Pandit Malaviya: He has come down to five hours from five days. Do you think. Sir, that is unreasonable? I shall try to make it as much less as possible. I am not saying this lightly. I will earnestly endeavour to make it as short as possible, perhaps two to two and half hours.

Shrimati Renuka Ray: I want to ask a question. Sir. This clause 2 deals with applicability. I want to ask you again whether we can bring up the whole subject of marriage and divorce when the consideration stage is over.

Mr. Deputy Speaker: The hon. Member wants my ruling again and again. I wish only to say, is it necessary at the end of the discussion to give a ruling? Anyhow this much is clear. The hon. Member will try to conclude as early as possible tomorrow. So far as this matter is concerned and after he concludes

I will immediately take up the half-hour discussion now and we shall go on till 1-30. I thought the hon. Member, Pandit Malaviya might conclude if we sat for another half an hour today, but there does not appear to be any chance of that. Therefore, if he will take some more time tomorrow, immediately after him I propose calling the Hon. Law Minister.

Shri B. Das (Orissa): Sir, the reformists are keeping very quiet on the floor of this House. Two violent though very outstanding speeches have been made by my friends, Sardar Man and Pandit Malaviya. Therefore, you will permit us who are the majority in this House to have a say, apart from what Dr. Ambedkar will have to say in his final reply on behalf of Government.

Hon. Members: Yes, Sir.

Shri Syamnandan Sahaya: Yes, Sir, the father of the House should be given a chance.

Shri Shiv Charan Lal (Uttar Pradesh): Sir, we have amendments on which we want to speak.

Khwaja Inait Ullah (Bihar): Sir, so many amendments have been moved regarding this clause so as to bring within the scope all Indians, and so much has been said on that point. Therefore, I wish to throw some light on the Muslim point of view, as to whether they can accept it or not. So I must have some time.

Shri R. K. Chaudhuri : May I respectfully point out that yesterday when I raised this question of opposition to an amendment, you were pleased to say that such opposition would be allowed. And I particularly laid stress on the amendment by which the Hon. Dr. Ambedkar wants to introduce " tribe ", which is a very important matter. I want to speak on that—1 am not going to speak on other subjects.

Mr. Deputy Speaker: Merely because an hon. Member tables an amendment he is not entitled to speak. I am allowing all elucidation on points to those who have tabled amendments, but when similar amendments have been tabled and one or two hon. Members have spoken, on account of the time which is already taken, if some hon. Members who have tabled amendments are not able to speak, I do not think I need wait so far as this matter is concerned. We are having a second reading on this clause 2. As regards the request of my hon. friend, Khwaja Inait Ullah, I am seriously considering whether that amendment which wants to apply this Bill to Muslims and Christians is not enlarging the scope of the Bill. I do not think any further discussion on this matter is necessary. Anyhow, I am going to call the hon. Minister immediately after Pandit Malaviya.

Shri R. K. Chaudhuri: I wanted to oppose Dr. Ambedkar's amendment relating to the introduction of the word " tribe ".

Shri J. R. Kapoor: With regard to what has fallen from you. Sir, about the admissibility of the amendment seeking to enlarge the applicability, may I submit that even at an earlier stage this point was taken up and then we were

assured by the hon. Speaker that before any ruling was given on that point we would be given an opportunity to have our say on the matter. It might be the Chair's first impression that it may not perhaps be within the scope, but you will please permit us to have a say to convince you how easily it comes within the scope. If that be your ruling I may submit many of the amendments of my hon. friend. Dr. Ambedkar would also have to be declared out of scope.

Mr. Deputy Speaker: Dr. Ambedkar himself to be ruled out of this House?

Shri J. R. Kapoor: Not he, some of his amendments; because they are very much on the same lines as this amendment.

Mr. Deputy Speaker: One wrong amendment does not make another amendment good. If any of the hon. Law Minister's amendments also enlarges the scope it is out of order—we will consider that matter.

Pandit Malaviya: I have another amendment of which I have given notice—a short amendment, which I shall move tomorrow at the end of my speech.

Mr. Deputy Speaker : Provided, it is an absolutely formal amendment.

Pandit Malaviya : I gave notice of it day before yesterday.

Khwaja Inait Ullah : I will not take more than a few minutes.

Mr. Deputy Speaker : No, Sir.

Shri R. K. Chaudhuri : What about my point, Sir?

Mr. Deputy Speaker : The hon. Member has got the ' Ayes ' lobby and the ' Noes ' lobby. He can vote against the clause if he likes.

It is now too late for us to embark upon the half-an-hour discussion. It will be taken up on some other day.

The House then adjourned till Half Past Eight of the Clock on Thursday, the 20th September 1951.

HINDU CODE—*contd.*

Shri Amolakh Chand (Uttar Pradesh) : May I draw your attention Sir, before Pandit Malaviya resumes his speech, about a cartoon which appeared in today's *Indian News Chronicle*, about which I have sent a note to you ? May I know whether that will be taken up just now or on some other date?

Hon. Members: What is the subject matter of the cartoon?

Shri Amolakh Chand: May I, with the permission of the Chair, just satisfy the curiosity of hon. Members about this cartoon?

Mr. Deputy Speaker: I have received this cartoon published in the *Indian News Chronicle*. I think it shows my likeness. It is a cartoon of a clock where both the hands are being held up by some of the hon. Members who have spoken against this Bill, but underneath the very pendulum is said to be held intact, not moving forward or backward, by a representation of myself. So long as the speaker is here that is another matter. But casting aspersions on the Chair is not only unjustified and undignified but here it is also opposed to the facts. I do not know if any hon. Member will ever raise any point that whatever might be my differences I have done anything unjust in this House.

Hon. Members: No, no.

Mr. Deputy Speaker: Therefore, I will look into this matter. It is a very serious matter—it does not matter whosoever may be in the Chair—to cast aspersions on the Chair. The moment the House feels that the person who occupies the Chair for the time being is not doing justice, it knows what to do, so far as that person is concerned. But it is not for outsiders to caricature, and it is an aspersion on the whole House. I shall look into this matter leisurely and then find out what action should be taken. However, I do not want this to interrupt the progress of this Bill.

Shri T. N. Singh (Uttar Pradesh) : At the same time, whatever the action about that particular cartoon be, we do feel that the Press should not come out with anything which casts aspersions on the Chair of this august House, and it should be prevented. I feel that the matter, since it has been raised, is rather important and it should not be postponed in this fashion, I would urge that once the matter has been raised, we should certainly take it up right now and the House should express its disapproval.

Mr. Deputy Speaker: I shall take time to consider it.

Pandit Malaviya (Uttar Pradesh) : When I left off yesterday, you were good enough to ask me how much more time I would need. I respectfully expressed my inability to indicate any exact amount of time and requested you to let me proceed on the basis that I should try to take as little time as may be possible. You were good enough to more or less indicate a limit, that I should not take more than about 2 1/2 hours more.

Shri Sidhva (Madhya Pradesh): You said half an hour, Sir.

Pandit Malaviya: I have since heard.....

Mr. Deputy Speaker: I can only make one observation. The hon. Member yesterday was encouraged to ask for five days on the suggestion humorously made by the Hon. Law Minister.

The Minister of Law (Dr. Ambedkar) : He wanted five days— I suggested five hours.

Mr. Deputy Speaker: When I was asking how long the hon. Member was likely to take, the Hon. Law Minister humorously said, five days. I was suggesting half an hour, the hon. Member was wanting more. Now what I propose doing is this.....

Pandit Malaviya: May I say.....

Mr. Deputy Speaker: I will do sufficient justice to the hon. Member. Now how long, may I know, is the Hon. Law Minister likely to take to reply?

Dr. Ambedkar: It is my intention to be brief, but I would like to cover some of the points raised, and I feel an hour or an hour and a quarter might be more than enough for me.

Mr. Deputy Speaker: I propose calling the Hon. Law Minister as soon as the hon. Member who is on his legs finishes. Even if he takes 2 1/2, hours, there will be sufficient time if I call the Hon. Law Minister at 12 o'clock.

Shrimati Durgabai (Madras): The hon. Member who is on his legs after

having mentioned five hours or five minutes or whatever it may be, said that he would submit himself to the ruling of the Chair and you very kindly said that he should not require more than half an hour. After having once submitted to the ruling of the Chair, would the hon. Member be now permitted to retract ?

Mr. Deputy Speaker: I leave it to hon. Members themselves.

Pandit Malaviya: I said about another matter yesterday that when my sister makes the rules, we will have to submit to many things from which fortunately we are free at the moment.

Shrimati Durgabai: This is already in the rules.

Pandit Malaviya: What I was intending to say was.....

Mr. Deputy Speaker: Under the rules, so far as Finance Bills are concerned, I can set a limit. With respect to other Bills there is no provision for setting a time limit on speeches.

Shrimati Durgabai: My point is that once the Chair has given its ruling

Mr. Deputy Speaker: Not ruling.

Shrimati Durgabai:would the hon. Member be permitted to go against that ruling ?

Mr. Deputy Speaker : It is not to be interpreted to be a ruling. It is only a suggestion.

Incidentally, I forgot that I will have to put the amendments to the vote of the House. Therefore, if the hon. Member would restrict himself to two hours, thus making half an hour available for the Chair, I shall call upon the Hon. Law Minister at 11-30 so that we may finish this clause and all the amendments on it before we rise for the day. The hon. Member may take two hours.

Pandit Malaviya : I am very grateful to you. Sir, for what you have said, but what I was going to say in the beginning was that whatever might have been the arrangement that we had more or less thought we had arrived at.....

Mr. Deputy Speaker : He need not labour that point.

Pandit Malaviya :since then some esteemed friends, for whose views and opinions most of us in this House have respect and regard, have taken the view that Members of the House should take as little time as possible. As I came into the House just now, it was conveyed to me that I should finish within a matter of minutes. I know that according to the rules one should have the time which he wishes to have and it is very good of you to say that you will stick to that. It is also true that I feel very earnestly that in a matter of such vital importance where things which have come down from millennia are going to be demolished, minutes and hours should not be counted and if somebody has something to say on this issue which is obviously not utter nonsense and irrelevance, then the question of time should not arise, whether he takes one day or two days or twenty days. But I respect the wishes of elders and of our leader and what I wished to say to you was that even though you have been good enough according to the rules to give me the

longer opportunity. I shall try to leave out almost all that I had to say and shall try to confine myself to a few minutes only. I say this with a deep sense of pain and injustice to me and to this cause, but I am a man, as I said, who believes in the Hindu methods of tolerance and even if an unreasonable thing is thrust on me.....

Mr. Deputy Speaker : The hon. Member will kindly resume his seat. I have been trying to avoid any impression being created that we are either hustling the Bill or unnecessarily dragging it on. I am bound to see to it that neither the one impression nor the other impression is created. We have spent sufficient time over this matter and just when we are concluding the debate and when, if a closure motion is moved. I am prepared to accept it because I am satisfied that there has been sufficient discussion on this matter and although individual Members might not have spoken, collectively all of them have spoken on all the points arising—just at this time, if the hon. Member feels aggrieved and then makes a point that for want of time and on account of some kind of limitation and pressure he is not putting forth all his points, he would not be doing justice to any of the persons here. I would like to avoid an impression being created that we are hustling this measure. It may be that there may not be sufficient support for the one or the other opinion. After all, we have to go by the rule of the majority in this House and it is open to all persons to express and press their point of view, but let it not be said that we are hustling the measure. The hon. Member has taken two hours. If he wants, he may have two more hours and if for any reason he is not prepared to proceed further, he need not make a point out of it, lest it should create an impression that we are hustling through this matter, though really we have been going on leisurely with it. Therefore, that kind of impression ought not to be created. It is open to him to speak or not to speak for various other reasons, which are extraneous. I am only concerned with the procedure in this House and the right impression both in this House and outside that we are not hustling such an important matter as this nor are we unnecessarily trying to stretch the discussion by any kind of filibustering. Therefore, in between these two impressions, I am trying to carry through this bill. The hon. Member need not refer to all those matters. It is his sweet will and pleasure to say what he wants to say or to refer to the further clauses or not to refer to any of them at all, or to make any comments for various reasons which he may consider fit and proper.

Pandit Malaviya : I entirely agree with the remarks that have fallen from your lips and I was not making a complaint. I was only mentioning the fact that for reasons other than those that you have stated I shall not allow myself to take all the time that I need and that I should have liked to take. That is all that I wished to submit. Incidentally, it will also probably enable several other Members of this House, who, I saw yesterday, were very keen to have an opportunity to say something, to have an opportunity to do so. I am not saying

this by way of any complaint, but I was submitting to you as a matter of fact that I have to leave out practically all that I wished to say and must now come straight to one or two points.

I will leave the point I was making when we dispersed yesterday, regarding the scope of the Bill having been extended, so to say, overnight by the new Constitution having included agricultural lands in the Current List. I shall leave that also there.

I will only touch in passing on another very important aspect, namely, that the bill which is before us now is so largely changed that it is almost unrecognisable compared to what it was when it was first introduced. There is a rule that Select Committees at the end of their reports should state that they have amended the Bill only in such measure, as they think, has not changed it materially and that the amended Bill does not need re-circulation or re-publication. That proves the principle that if a Bill is substantially changed in a Select Committee it should be republished and re-circulated. I submit that in matters of legislation we should observe the sanctity of the rules, because rules are framed in moments of calm and dispassionate consideration ; not *vis-a-vis* any particular item or any particular point of view, but with regard to the basic fundamental needs of ensuring that legislation is passed only with due care, thought and circumspection. Such rules, therefore, have very great value and it must be an ill day for the growth of healthy parliamentary traditions and institutions in any country if we begin to make light of them to suit the conveniences of our opinions on particular issues and particular occasions. I, therefore, feel, now that the Bill is so entirely changed to as it is, that constitutionally there can be no justification at all for proceeding with it, or any part of it now as it stands without that procedure being brought into force. I will leave that point also there.

I will touch only upon one or two things more and will resume my seat. Several friends who are supporters of this Bill said that this Bill has been drawn up in accordance with the tenets of the *Smritis* and *Dharma Shastras*. If I had the time I would have quoted extracts from the various *Smritis* and *Dharma Shastras* to prove the hollowness of that claim. I cannot do that now. I will, therefore, come straight to the two vital principles which are involved in the measure that is to be taken up—one the question of the degree of *sapinda* prohibition and second the question as to whether among the Hindus a remarriage of and married woman can take place.

Texts have been quoted from some of the *Smritis* on both these points. With regard to the *sapinda* question it has been argued that the *Smritis* have from time to time laid down different principles, that while one *Smriti* has said one thing another *Smriti* has said another thing and an attempt has been made to draw the inference therefrom that it was a matter not of such vital importance that it could not change, but that from time to time, reflecting the opinion and the practice of the age, the different *Smritis* have laid down different texts. I

was mentioning yesterday that in the matter of these *Dharma Shastras* there are rules of interpretation which have laid down cut and clear principles and methods of approach. It is laid down that the *Dharma Shashtra* can be interpreted only by the utilisation of the rules of *Mimamsa*. Fourteen sources for determining them have to be utilized. They are all mentioned and therefore if anybody wants honestly to understand these things he must go into the depth of that matter.

Almost every one of the *Smritis* and the *Dharma Shastras* have laid down that in the *sapinda* degree of prohibition we should have seven degrees on the paternal side and five degrees on the maternal side or more. Nobody has disputed that. It has been said that it is stated only in some of the *Smritis* as five and three instead of seven and five. I believe the *Paithinasi Smriti* text is relied upon for this purpose. In the belief that Members of this House wish seriously to take the matter into consideration as to whether it is laid down in the *Smriti* that it should be five and three, I shall try to clear up that point. The *Paithinasi Smriti*.....

Mr. Deputy Speaker: I do not think the Hon. Law Minister is dogmatic about this matter.

Dr. Ambedkar: When the time comes we shall consider it.

Pandit Malaviya: I am taking this only as an instance to show how the entire provisions of the Bill are based upon a complete misconception. The text in the *Paithinasi Smriti* is;

panchamin matrutah pariharet saptamin pitrutah:

So far it is clear—five degrees from the mother and seven degrees from the father. So, the *Paithinasi Smriti* also says the same so far. Then, it goes on to say :

treen matrutah panchpitrito va

It gives another view and says three from the mother's side and five from the father's side. If I had the time I would have gone into all the other *Smritis* to disprove the statement of some friends that the *Smritis* lay down different rules—in one case seven and five and in another case five and three and it is for us to select.

The *Mimamsa* lays down the method of interpretation of these texts. The whole basis of Hindu law rests upon the fact that the law comes for the *Shruti*. *Shrutis* are *Swatah Pramana*. Whatever is in the *Shruti* stands proved by itself and does not need any further argument. The *Smritis* are *Partah Parmana* : They do not by themselves carry that authority because they are *Shrutimula*. They belong to the class where authority is derived from *Shrutis*. Now, it is obvious then that if the same source is to be drawn upon by all the *Smritis* the obvious objection would be—and I suppose it would be a natural objection also— that if you claim that they all emanate from one and the same source, then how can there be conflicting versions in them. We can anticipate that

objection.

Mimamsa goes on to say that there may be cases where in the *Shruti* itself there is *auvikalp*, that is, where the *Shruti* itself lays down two alternatives that a thing may be of one or another.

There are instances of that nature in the *Shrutis* themselves !

[10 A.M.]

Udite juhوتي I anudite juhوتي !

That is from the *Smritis*. It says a certain *Yajnya* may be performed before sunrise, and it also says it may be performed after sunrise. But there is no conflict, because both are mentioned in the *Shruti*. And then according to the tenets of the *Mimamsa Shastra* other considerations come into play. Technically it is called *Atma tushti*, and according to the principle of *Atma tushti* each one has to decide— not for the pleasure of it; *Atma tushti* does not mean pleasure, it does not mean one's whim of taking one thing today and taking another thing tomorrow, taking rice today and taking *chapati* tomorrow. But *atma tushti* has a fundamental religious place. According to *Atma tushti* the *Dharma* has to be selected, and once it is selected it remains permanently there, for all time. But that is so only when both the things are mentioned in the *Shruti*. The *vikalp* comes only when both the things are thus mentioned in the *Shruti*. For instance you find:

Atiratre shodashinan gruhanti ! naatiratre shodshinan gruhanti !

(Late at night takes one of sixteen, takes not late at night.)

Two directly conflicting things in the *Shruti*. But both being there, the *vikalp* is possible. If the *Smritis* say two different things, then if we found that there is mention of the two things in the *Shrutis*, the *vikalp* would be possible, and the claim which has been made by my Hon. Friend the Law Minister and others that these provisions are based upon what the *Shrutis* say, would become correct. But the available *Shrutis* are silent on the point. There is no direction about the matter. The question then arises, how then do the *Smritis* contain different rules if they have derived them from the *Shruti* sources ?

Mr. Deputy Speaker : I understand the Bill to go according to the *Shrutis* if possible and without the *Smritis* if necessary. That is what, I think, the Law Minister has in view. Therefore, notwithstanding the doubt as to whether it is three and five according to strict rules of interpretation—and they have to be made consistent ; I do not think he disputes the proposition that everywhere they are trying to make it consistent so as to avoid any inconsistency—he chooses the latter view. Even if it is not borne out by the strict rules of interpretation he says that it is the correct one and should be adopted, subject of course to the approval of the House. I think that is the view of the Law Minister.

Dr. Ambedkar: Yes.

Mr. Deputy **Speaker** : Therefore, there is no good labouring the point as to what the interpretation is.

Pandit Malaviya: As I said, I am not doing this necessarily to go into the interpretation of this thing. I am taking this as an example to show the approach to the matter. What I wish to say is that according to the *Mimamsa Shastra* the two texts, one saying that it should be five and seven and the second saying that it may be three and five, must be reconciled and an interpretation—an infallible, unquestionable interpretation must be there. An interpretation has to be found which is unquestionable and incontrovertible. Otherwise the *Smriti* does not remain a *Smriti*. *Paithinisi* is among the *Smritis*. If we will only look for it we will find that we have in the *Smriti Sangrah*, we have in the *Nibandhakaras* a clear interpretation of this difference which lays down, and not only lays down but proves—it will take me time if I went into it, therefore I will not—but it is proved that this provision in the *Paithinisi* is not applicable to all people, it is not applicable to the *aurasa* and the others. In their case the seven and the five apply, and this variant of five and three can only apply to *Dattaka pufras* or to *Sapatni matas*. That is how the *Mimamsa Shastra* reconciles these two.

I took this instance to show that there is a clear way of interpreting the *Shastras*. If we want to go according to the *Shastras* we must go accordingly and we will find no sanction for deviating from the seven and the five degrees of *Sapinda* prohibition for marriage.

Similarly, I will take another question. A member read out with a certain amount of righteous satisfaction and vehemence that in the *Smritis* themselves we have provisions for the marriage of once-married women. The well known *Narada Smriti* and *Parashara* text was read out by an hon. friend of mine—here he is—and he said that the *Smritis* themselves have said that a woman may be married a second time. I can see some friends feeling satisfied about it. This is a tragic matter, for this reason that the meaning of that *sloka* becomes perverted if it is interpreted to mean that it relates to a married couple. I hope Members will not think that I am talking in the air. (*An Hon. Member: No, no*). The line is very simple:

Nahte mrute pravrajine, klibe ch patite patau !

Panchaswapatsu nareenan, patiranyo vidhiyate !

It is allowed at disappearance, demise, reclusion, impotency and sinfulness of the husband.

As it looks it is very simple. In the case of these and these and these ' husbands ', these friends think, another husband is provided. But I wish Members of the House kindly to devote their mind to this. The simple rules of *Vyakarana* come into this question.

An hon. friend says *Vyakama Padhao* and one may feel tempted to play the pedagogue to so distinguished a class, but I shall resist the temptation and I will only briefly explain the matter because it is a point upon which the whole

edifice of the Hindu Code rests. It is that one sentence upon which everyone seems to be taking his stand. It is a very simple matter. According to the rules of grammar *Eka Vachana* in *Saptami* of *Pati* is *Patyau*. That is formed according to definite *Sutras*. I do not know if you will let me go into details to show how the words *Patyau* and *Patau* are each formed. I am quite sure it will be interesting, but it will take time. But every thing will become clear if we understand that.

Mr. Deputy Speaker: What will happen to *Hari*? It is a masculine?

Pandit Malaviya: I see. Sir, you are interested and if you will permit me...

Mr. Deputy Speaker: Then *Hari* is *Ikaranta Pullingam* and *Saptami* is *Harau* and *Pati* should be *patau*. That is my difficulty. I do not know if it is different.

Pandit Malaviya : Sir, your question is quite valid. That is it. From *Hari* it is *Harau*. So from *Pati*, it should be *Patau*. But we all know it is *Patyau*. Why? The difference is in this way. When it is *Saptami Ek Vachan Gni* comes in. Then the *Sutra Patih Samasa Eva* comes into play and the *Ghi Sangya* gets ruled out and another *Sutra aut*, comes into play and it becomes *pati* plus *au*. Then by the *Sutra Ikoyanachi* the 'i' gets transformed into *ya* and *Patyau* is formed. That is in the case of the ordinary meaning of the word *Pati*, that is husband. The rule is quite clearly laid down *Patih Samasa Eva*. Now, Sir, the question arises why instead of *Patyau* the word *Patau* has been used. It is such an obvious thing that even a blind man can see, that there is some difference, there is some purpose. The Hon. Law Minister will bear me out that the normal form (*rup*) of *Pati* in *Saptami* is *Patyau*. But in this text *Patau* is used. (*Interruption*) An hon. Member says that he is extremely doubtful. I do not claim for myself his wisdom in this. But, *Panini's Ashta Dhyayi* is there and if any hon. Member can point out anything to the contrary. I will do whatever he will say.

Shri Amolakh Chand: Will the hon. Member quote the *shloka* also?

Pandit Malaviya : I am coming to that. Therefore, the word used is different from the normal word *Patyau*. Here the word is *Patau*. Now according to the rules of Sanskrit grammar...

Mr. Deputy Speaker : It is not necessary. The hon. Member means that it is incorrect.

Pandit Malaviya: No, no. It is not incorrect. What I was going to point out was that in this case the word *Pati* is used not in the sense of *Pati* meaning husband but according to the rules of grammar— I am not saying it on my own but according to the rules of grammar can only be used where the *Achararthe* sense comes in. Then, not being in the sense of *i.e.* husband, the *sutra* ' *pati ah samas eva* ' which applies normally and results in ' *patyau* ' does not apply and ' *Ghi* ' *Sangya* takes place etc. and when ' *Ghi* ' *Sangya* comes in then the *sutra* *Accha Gheh* applies and the word *Pati* plus ' *i* ' becomes *Pata* plus ' *Au* ' ; and by the rule *Vridhhi* it becomes *Patau*. It is a recognized word in the Sanskrit Grammar of *Panini* ; it is not mistake that it

has been used here in that form; it is not by thoughtlessness that it has come in. But the word *Patau* instead of *Patyau* has a meaning and the meaning of that word *Patau* is one who is going to be a *Pati* and not one who is a *Pati*. That is the meaning of that word. Let anybody challenge what I am stating. For thousands of years that grammar has been there and nobody has questioned it ; the word *Patau* means not a husband but who is on the point of becoming a husband. This correct meaning of this *shloka* completely changes...

Prof. K. T. Shah (Bihar): *Anayu* comes in there.

Mr. Deputy Speaker : *Patranyo Vidheeyate* comes in. It must have been a husband.

Pandit Malaviya : I am coming to that. I am very glad you raised that question. In the *Prathama* there are only one set of *sutras* but in *Saptami* there are these two sets of *sutras* mentioned by me, one forming *patyau* and another forming *Patau* and secondly the difference had to be shown at the first place only, to clearly indicate that only where there had been a talk of marriage but no marriage in fact, that this question arose, while in the second place, it is a husband who is to be indicated. It is not merely a candidate for husbandship which has to be provided. Therefore, the second *Patiranyo Vidheeyate* is perfectly correct.

Mr. Deputy Speaker: *Anyo* must mean what preceded also.

Pandit Malaviya: *Anyo* is again *Prathama*.

Mr. Deputy Speaker : *Prathamanyah* also must be the husband.

Pandit Malaviya : If it had been both the same then in the first place it would have *Patyau*.

Mr. Deputy Speaker :Whatever is intended by the provisions one must correspond with the other one.

Pandit Malaviya: How can it. Sir, when the very purpose is different. The beauty of Sanskrit language is that it expresses in a word what it takes a sentence to say in another language. That is the beauty of Sanskrit language. If a sentence says " If mango is not available, then guavas may be taken " we cannot say that mango and guava must be one and the same.

Mr. Deputy Speaker : There cannot be a comparison between two absolutely uncorrelated matters. *If Anyo* is used that word or the other must relate to the same category. If in the one case it is not marriage, in the other case also it is not marriage. If it is marriage in one case, it is marriage in another case. Both of them are understood to be the marriage of the husband.

Pandit Malaviya : We cannot change the meaning of words.....

Shri B. K. P. Sinha (Bihar) : On a point of order, Sir, I find that all these discussions are academic. The words *Pati* and *Patyau* are used in this *shloka* and not *Patau*.

Pandit Malaviya : That must be a wrong print. I am not saying it

lightheartedly. The original test is *Patau*. The very *chauda*.

Mr. Deputy Speaker : *Patite Patyau* must be wrong because it should be *guru*. The prosody will come in the way of this *Pati and Patau* are different. Apparently it is wrong.

Pandit Malaviya : It is obvious that it cannot be *Patyau*. What I wished to submit was that this rock upon which that edifice stands does not exist at all and the meaning of the word used is not husband ; it is not *Patyau* but it is only one who is on the point of becoming a husband, *Patau*. There is thus nothing in the *Shastras* to suggest that a married Hindu woman could marry again.

I do not want to take much time of the House. I, had many things to say. But, in view of what I referred to, I do not wish to go against the wishes of those whose wishes and words are law for us. I, therefore, do not wish to take much more time, much though I would have liked to say many things. By these two examples I have tried to show how completely fallacious are the grounds on which the Hindu Code is proceeding.

I will conclude by mentioning one thing more. In Hindu society from time immemorial, laws have prevailed without the authority of the State, without the authority of the police, without the authority of any legislature as such. There has been no governmental sanction behind the laws which have been in force. The laws were promulgated by men who had attained to perfection as nearly as man could, who were held in universal respect, who worked for the good of the people. And there was the sanction of what has been called in the *Shastras*, *Apoorva*, the unseen, that which will happen under certain circumstances ; the thought that what one was doing today would have effect later on ; that the human soul, the *jeeva* does not lead one life alone, but goes through a chain of births; that the actions of one life are inter-related to the actions and results of previous and future lives; that deeds of virtue and piety and righteousness bring a reward which is greater in reality than any reward of comfort or convenience which one may have in this life. A clear conception of the real value of things as distinguished from the ephemeral aspect, was always kept in mind, it is under the force of that sanction and that belief that the laws which were promulgated have always been followed. In the whole of this country, throughout its length and breadth, the law of the Hindus has been observed not because any one—for instance my esteemed friend Kaka Saheb Gadgil who is coming into the House and who talked on this Code, not like the elderly responsible man that we know him to be, but like a gay youngster who just utters what comes at that moment in the mouth, or any one else—found them to be comfortable or otherwise, found them to be pleasant or irksome, but because both Kaka Saheb and Govind Malaviya and the other 300 millions like them have been steeped in the conviction and belief that what they are doing today will have repercussions hereafter, that what they go through now will bring its own reward. They have been all bred

up to believe that it is not *Preya* alone which matters in life, but that it is the *Shreya* of things which must be assiduously inculcated. That has been the shape of things in this country and in this society. Let not the Government make a thoughtless and hasty mistake in demolishing that fabric upon which the respect for and the adherence to the law has prevailed. If one set of legislators, one set of wise men or wiseacres today legislate in one particular manner as they think fit, people will have ceased to worry about *Apoorva*. People will know that it is possible for them the next day to get a law made to suit their pleasure and their convenience. The moral fabric will disappear and man might go back to the old age where there was no method or system of marriages, where a state of things prevailed which probably, in decent society, would not be considered worth mentioning. That is the stake which is involved.

I should have liked to have dealt with the question of divorce; I should have liked to have dealt with the question of widow remarriage; I should have liked to have dealt with the question of inter-caste marriage; I should have liked to have dealt with the question of monogamy. I hope I will have opportunities as these clauses come up to deal with each one of these at the appropriate time. It is not for reasons of orthodoxy alone that this question must be considered. It is from the point of view of the over all interest and well-being of society that we should tackle these problems. I said society. Society means the whole group of people, all the inhabitants taken together. It is formed of the units, of the individuals. But, the unit and the whole, even though they are inseparably interdependent, have their own separate entity also. The body is made up of all the limbs. But, the hand has its own existence by itself; the head has its own. The body as a whole cannot be by itself without the hands, feet, legs and the head.

[SHRIMATI DURGABAI IN THE CHAIR]

But, the body is not merely the hand or the feet or the head. It is the sum total of the whole. When, therefore, we have to think of society, we have to think of the good and interest of society as a whole and if any thing is in the interest and well-being of all, then, whether it is pleasant or whether it is a little less pleasant for one individual here or one individual there, that must be adopted. When these topics come up, I hope I shall have opportunities to deal with them. I wished to say a great deal to bring out in clear perspective the issues involved, the fallacy or correctness of the approach made, and the conclusion to which we must irresistibly be driven. And right now, Madam, I should have had another advantage, that one esteemed Member of this House, in the very nature of things, being in the Chair, is now bound to be as fair to me as anybody else. But I said that I shall not take more time, and shall respect the wishes and the decisions of the esteemed Leader of this House. I will therefore close my speech, and close it with the earnest appeal that a

matter of this seriousness, affecting the life of 300 million human beings should be considered as carefully and in as great a detail as may be humanly possible. There is only one formal thing which I must do now and that is to move the amendments of which I had given notice three days ago. I beg to move:

(i) In part (a) of sub-clause (1) of clause 2, after " including " insert "Buddhists, Jains, Sikhs". (ii) Omit part (b) of sub-clause (1) of clause 2. After the first amendment, the clause will read as follows:

" to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments, including Buddhists, Jains, Sikhs, Virashaivas or Lingayats and member of the Brahmo, the Prarthana etc. etc."

I have moved this amendment for a simple reason. I hope and pray that I am a devout Hindu—I do not know if I can make that claim—and.....

Dr. Ambedkar: After such a speech who else can make that claim ?

Pandit Malaviya : And in the *Sankalpa* which we perform on all occasions, we say *Bauddhavatare*. If only I had the time, I would have tried to show that Buddhism, Jainism, Sikhism etc., while they have their own independent place and position, cannot, by any stretch of imagination, be 'treated as outside the pale of Hinduism. That does not mean that Hinduism lays any claim upon them or wishes in any way to restrict their complete independence and separate' existence. It is not that. I am talking of the historical relation. They have all sprung out of it and have always formed part of it. Even in their religious books and procedure, even in their daily practices and daily life, there are any number of points of identical similarity which still persist. In this land there should be no need, therefore, to show them separately. My amendment does not make any difference in the result. The clause instead of coming as a separate clause comes within the previous one.

I have now only to make an appeal to the Members of this House to view this matter dispassionately. As I said, I do not deny that there are some people who feel that it will be good for society if such a law is enacted. My appeal to them is to proceed in the right manner about it. Sometime ago there was the Inter-caste Marriage Act which was passed, making inter-caste marriages among Arya Samajists valid. At that very time Dr. Bhagwan Dasji, that great learned scholar and devotee of Manu, brought before the then Central Assembly, a Bill for the application of that clause to the whole body of Hindus. That Bill was not proceeded with, and after long and careful discussion it was dropped. Inter-caste marriages among Arya Samajists had gone on for some decades and they had carried on their movement for a long time and when the same had become common and the time came the measure was adopted. Let us take a leaf out of that book. If social reforms have to be made, nobody can object to them, if all those who are concerned should desire to have them. Let us, therefore, adopt that course, if for nothing else, so that what you do may not remain a mere dead letter on paper without

any effect whatsoever.

It has also been pointed out that because now we are only taking up the parts of the Code relating to marriage and divorce, we should consider the feasibility of making an All-India All-Community Code towards that end. I am not one of those whose argument is that if monogamy is good and is to be enforced for the Hindus, it should necessarily apply to everybody. I do not say that-at all. If monogamy is good, then I want it for the Hindus whether it is applied to anybody else or not. I do not want to argue that if the rule of monogamy is good for the Hindus it should not come to them unless it comes for everybody else. That is for the others to decide and if they do not want it, let them not have it but if it is good for the Hindus let it come to them. (*An hon. Member*: Is it good ?) It is good and I think it is the only good thing; but that, however, does not mean that we should become blind to the requirements of a good thing in itself or that we should not take other relevant facts and aspects into consideration. So far as the principle of monogamy goes I have no objection to it, Nobody can have any objection to it, and I should be unhappy if anything except monogamy is found in practice anywhere...

Giani G. S. Musafir (Punjab) : There is no harm in asking for all a thing which is good in itself.

Pandit Malaviya: I do not say that it should not apply to every body ; it is for the Government and for the others to think about the others. They have now brought forward a restricted measure dealing with only marriage and divorce and if they think that it is right to apply it to the whole country, let them do it. That is another consideration which the Government should certainly take into account.

Shri Bhatt (Bombay) : But can we Members not ask the Government that we wish it should be made applicable to all ?

Pandit Malaviya: Certainly. Many people have said it.

Giani G. S. Musafir: I think it is our duty to ask for it.

Pandit Malaviya : It is an important point which, I hope, the Government will consider.

Mr. Chairman : May I ask the hon. Member if he does not consider it desirable that we should practise it before we preach to the others and would we not then have a better or stronger case ?

Pandit Malaviya: Madam, I do not want to be so impertinent as to argue with the Chair. I will only close now by repeating my appeal that Members of this House will rise to the requirements of the position of responsibility which they occupy and will deal with this measure with that sense of gravity which it deserves, so that the immemorial and hoary traditions and foundations of the life of the Hindu community may not be tampered with or destroyed in a lighthearted or profane manner.

Shri Jajoo (Madhya Bharat): Madam, the question be now put. (*Interruptions*).

Babu Ramnarayan Singh (Bihar): I want to speak, Madam.

Mr. Chairman : I am not deciding the issue myself. I will leave it to the House. May I know what time the hon. Law Minister will take for his reply ?

Dr. Ambedkar: In view of the long speeches and the varied arguments advanced I would take about one and a quarter hours: possibly I might take even more, I do not know.

Chairman : If half an hour is taken for the amendments and the Law Minister is going to take one and a quarter hours for his reply we will have to conclude the debate by 11-30. Meanwhile if hon. Members are contented to confine their speeches to ten minutes, so that more hon. Members will be able to take part in the debate, I would like to conclude the debate precisely at 11-30.

Shri Naziruddin Ahmad (West Bengal) : It was decided that the amendments will not be put to the House at all.

Pandit Malaviya: The Deputy Speaker said that he would call upon the Law Minister at 11-30. But since we have the time, other Members may be given an opportunity to speak and if you do not think it necessary, the rule about ten minutes may not be laid down.

Mr. Chairman: The hon. Member need not jump to any conclusion, that because a lady is in the Chair, therefore, she may not be fair to the House. I would like to respect the religious susceptibilities of the House as much as anybody else. The Deputy Speaker has told the House that half an hour would be taken for the amendments. It is true that the Hon. Minister will be called upon to reply at 11-30. There is also another traditional procedure, namely the closure motion. In view of these two facts I would like the debate to be concluded by 11-30 and not later.

Shri V. J. Gupta (Madras): What about the closure motion ?

Mr. Chairman : Now that the House has agreed that the Hon. Law Minister is to be called upon to reply to the debate at 11-30, there is no necessity for the motion. Agreement is always better than closure and its acceptance.

Khwaja Inait Ullah (Bihar) : (*English translation of the Urdu speech*) After deliberating long, I had decided not to say anything about this Bill. I stick to this very decision of not speaking on the matter even today, whether or not Hindu Code Bill be passed. Well, it is a different thing altogether...

An Hon. Member: Do speak.

Khwaja Inait Ullah : I should say, but I do not want to. It is a different thing that our brethren also should treat their sisters and daughters in the same way as I personally do. But, as the name ' Hindu Code Bill ' is attached to this Bill and it is said that this legislation is being formulated particularly for those following the Hindu-religion, I feel that from the viewpoint of Religion, it is not proper for me as a Muslim to interfere in the social law of Hindus wherein they want to make, or are making changes.

An Hon. Member: It should be done as a human being.

Khwaja Inait Ullah: Yes, I am doing it as a human being, but while being a human being, I am an Indian and a Muslim also. It is, therefore, that I want to give out my impressions just in accordance with my own religion. All the amendments at hand now have compelled me to express my views. There is an amendment that all those, *viz.*, Muslims, Christians and others, who have been exempted from the operation of this law, be also included.

Shri J. R. Kapoor (Uttar Pradesh): Only if they so desire.

Khwaja Inait Ullah: If they so desire, and also those who do not. Amendment No. 90 runs: " This Code applies to all Indians irrespective of their religion, caste or creed." Likewise, it is also in 91, 92 and 93. Some members—my hon. friend Dr. Syama Prasad Mookerjee, especially while moving this amendment said at the very outset that " secularism " was spreading like a disease in India. I regret to say that my friend, who is so very capable, thinks secularism, which is not a disease but a cure, to be a disease and wants that all the laws under it be made uniform, *i.e.*, the laws that are made for Hindus be also made applicable to the Muslims. This is quite correct if it (the law) is a law of economy, a political law, influencing somebody's character or the social life of India ; it should then definitely be one ; but secularism never means that such laws and personal laws be formulated as may be same for a Hindu and a Muslim. It means that the same will be said about Hindus as about Muslims, though it is not necessary so for a personal law as we have several laws which differ from those of Hindus. Just yesterday a Sikh colleague of mine said that their laws also differed from those of Hindus. I do not intend discussing that aspect of the matter, but I only submit about its application to Muslims.

Our Hon. Minister Gadgil said in his speech yesterday that he wanted to change the social law of the Hindus, and for changing this he advanced the argument, which I think he did successfully, that since this law has been seeing changes, we are also entitled to change it. But he said furthermore that they would try in this way so that in the days to come the Muslims may be included. To him I would like to submit humbly that they can change that law only because of the fact that the Hindu Law, as he proved, has been seeing changes. But here I want to tell him that Muslim law has neither been changed for the last 1350 years, nor shall it be changed in the days to come, since Muslims believe that their laws for marriage and division of property are not made by them but made by God and as they appear in the Holy Quran so nobody on the surface of this earth has the right to change them.

Sardar B. S. Man (Punjab) : Do the Muslims of the Punjab abide by the law of *Shariat* or the law of Custom, which is entirely different from *Shariat* ?

Khwaja Inait Ullah : If somebody says that the Muslims of the Punjab drink, does it mean that all Muslims will be allowed to take wine ? If any Musalman does something bad, does it mean that all others will be allowed to do the same ? If any Muslim does not abide by the law of Islam, I am not prepared to

make him do so, forcibly. He is at liberty ; he may go against his conscience, against his religion and against his society. But so long as his actions are not harmful to society, neither myself nor any Government can interfere in it.

Sardar B. S. Man: According to Islamic law a thief should be buried alive, or his hands should be cut off. Is this law observed in any Islamic country ?

Khwaja Inait Ullah : My friend Mr. Man has raised a reasonable question. If he sees me outside, I shall explain to him in a convincing way. Here I do not want to take any more time of the House. In Islam there is a permission for some laws, as to what extent they can be brought in line with the laws of the country. I can say to what extent Islam has allowed its laws to be brought in line with the laws of the country, and also the limit which should not be transgressed. I would like to submit to him that, if a thief in an Islamic country is not punished according to the Islamic law, there is a permission that we can change it; but some laws are such that we cannot change. I would, therefore; like to submit to these friends...

Most of my time was taken by my friends in their interruptions. I should also get that amount of time.

Mr. Chairman : That will not be made good.

Khwaja Inait Ullah : I was submitting that it is not a right course for this House to make for Muslims as well the law which to any extent goes against their religious commandments. This Bill can be passed with majority, but I do want to submit humbly that nobody perforce can be asked to follow a certain law. Majority should not compel us. I want that Muslims should not be compelled to agree to this law. Nobody will refuse to agree to the other laws of the majority.

Some of my friends said that all those who reside in India are Hindus. I take pride in calling myself a Hindu. I, too, say that all the inhabitants of India are Hindus. I am positively a political Hindu. Not from today but for the last twenty to twenty-five years I have been calling myself a political Hindu. Here I also want to say that apart from being a Hindu politically, I am and shall continue to be a Muslim by religion.

An Hon. Member: What are you racially ?

Khwaja Inait Ullah : I am Hindu. My forefathers were Brahmins and Brahmin blood is flowing in my veins—that pure blood which has not been mixed up so far.

Well, the sum and substance of my speech is that no such law as is against the Commandments of our religion and of God, be thrust on us, but as an Indian I shall have no objections to agree to any social or economic legislations.

Kumari Padmaja Naidu (Hyderabad) : I welcome this opportunity of expressing my unqualified support for the Bill. I would like at the very outset to congratulate the Government on its courage in bringing forward this measure in spite of the widespread and fierce hostility towards it that has been so

sedulously instigated by the forces of reaction that still, alas ! today dominate certain sections of this country. The author of this Bill does not stand in need of any words of praise from me. For, with this measure, whether this House chooses to accept or reject it. Dr. Ambedkar takes his place in the long line of social legislators who throughout the ages have laboured diligently, always in the face of opposition, often in the face of persecution, to eradicate social injustice and to enhance the sum total of human happiness.

For many years men and women throughout the length and breadth of this vast country have eagerly awaited the enactment of this Bill. They have watched with increasing alarm its decline from its original forcefulness because it was considered expedient for compromise after compromise to be made in order to win the maximum support for it. But even in its present and mutilated form this Bill is only comprehensive measure that has ever been shaped for the liberation of Hindu women from the age-old bondage of the unequal laws to which they are still subject. I do not ignore, neither do I make the mistake of over-estimating, the volume of protest from the poor deluded women whose ignorance and superstition has been exploited with subtle insidiousness by the vested interests of bigotry determined to defend their last bastions to the bitter end. What a tragic spectacle it is that we witness in India today of Hindu women allowing themselves to be hypnotised into denouncing the very measure that has been so carefully devised to secure for them the equality of laws to which they are entitled under the Constitution. But today it is neither as a woman nor as a Hindu that I plead for support to this Bill. I speak as an Indian, passionately jealous of the honour of India which is pledged not only to this measure but to every other form of social legislation necessary to redress grievous wrongs and to alleviate human suffering arising out of unjust laws. So long as any section of the people of this country continue to be debarred, on the grounds of sex or caste or creed, from the full enjoyment of equal rights, so long will our Constitution continue to be a hollow mockery. And what of the freedom for which a long and gallant fight was waged, a fight that was shared by thousands of sensitive Hindu women who, for the first time in their lives, left the precious sanctuary of their sheltering homes. They came to the battlefield and stood besides their brothers' and faced jail and lathi charges and often enough, humiliation, worse than death. If today those thousands of Hindu women who fought for the independence of India are to be denied their just rights, then our hard-earned freedom is no more than a handful of dust.

I have studied with some care the numerous speeches and statements that have been made by various Hon. Members of this House, far better qualified than I can ever aspire to be, to judge the technical legal implications of this Bill. I must confess that I have been a little surprised to find that with all their forensic skill and expert dialectic they have not been able to forge many weapons with which to bludgeon this Bill and none of them with sufficient

validity of sanction to be lethal. We have all grown a little tired of having it proclaimed in every language, in every conceivable permutation and combination of phraseology of bearing it shouted day after day from the house stops and the market place and highways and by-lanes that this Bill threatens to destroy the very stuff and texture of the fabric of Hindu society. In a statement that unfortunately received nationwide publicity in America, a very distinguished hon. Member of this House has declared that this Bill is an attack on an ancient and gentle religion that has survived for five thousand years. He announced that because now the very structure of Hindu society was threatened, he intended " to fight and fight and fight against it ". It passes my comprehension that anybody who is proud of calling himself a Hindu can talk or even think in such terms without realising that he is dishonouring the very religion that he claims to defend, as though any of the great religions of the world that have survived through centuries of human history could be endangered by social legislation or by any speeches or writings or other form of human endeavour. If there is any religion in the world that can be imperilled by these trivial things, then it deserves to be allowed to perish.

Speaking three days ago on the floor of this House, Dr. Syama Prasad Mookerjee described in very moving terms the immemorial beauty and wisdom of the teachings of Hinduism. He spoke of its comparable flexibility— I think he used the word adaptability—that had enabled Hindu philosophy to survive through centuries of foreign invasion and alien domination resisting wave after wave of the fiercest political and religious and economic onslaught. Surely, for all time to come Dr. Mookerjee has given the final answer to the futile and foolish argument that any social legislation intended to render justice to the under-privileged can imperil an ancient religion based on the loftiest conceptions of the sanctity and indivisible unity of all life.

Another serious charge which is sought to be levelled against this Bill is that by making legal provisions for divorce it will open wide the flood gates of immorality. It has been proved conclusively by speaker after speaker that there was provision for divorce even in ancient times. We are all aware that more than 75 per cent. of the Hindus in this country have always had the benefit of an easy and simple and effective system of divorce. So, this argument seems to lack any real validity and I think it has been employed merely to indulge in what is fast becoming a national pastime in this country, that of disparaging the West and western ways. May I be permitted to express my regret at the growing 325 PSD. tendency in this country to make sweeping generalisations about the morals and manners of other races in other countries ? This tendency is all the more deplorable because only too often hasty judgement is founded on insufficient knowledge, usually gleaned from the sensational publicity given to the doings of a handful of neurotics and decadents such as are to be found in every country of the world. Certainly, they are to be found in every big city of India. Dr. Mookerjee rightly drew our

attention to a grave problem that is today troubling the psychologists of the West and that is the growing prevalence of psychoses corresponding to rise in the rate of divorce. But may I respectfully suggest to Dr. Mookerjee that if he would pause and ponder over this problem and analyse it carefully he will find that the psychoses are not the result but the root cause of much of the divorce in the West. In many western countries, particularly those that have been ravaged by the last two great World Wars, the entire equilibrium of life has been seriously disturbed. Acute economic distress, and a morbid obsession with the atom bomb and the imminence of another World War—all these cause tensions that lead to both physical and mental insecurity. These inevitably result in a certain emotional instability which must of necessity have its repercussions on family life. But the fact remains that whatever may be the abnormal conditions in some countries, whatever may be the outward variations of morals and manners in different races, fundamentally the human race is the same everywhere and even today in every country of the world the family unit continues to be the very core of human society. Normally balanced men and women value a certain grace and dignity in human relationships and they do not resort to divorce light-heartedly. It is only when they are driven to it as the only ultimate solution of a situation that has become intolerable that they resort to divorce. And if this be true of men, it is I think, a hundredfold more true of women. Because in this changing and unstable world, devastated by wars and revolutions and famines, where all standards of ethical values are wavering, where all national and international codes of morality are vacillating, there still remains one thing changeless and unchanging—one thing that is still today what it was at the dawn of creation and what it will be at the end of time. And that is woman's inherent consciousness of the grave responsibility that rests on her through her high destiny as the creator and guardian of the sacred flame of life. And perhaps in no other country of the world has that consciousness flowered in such perfection of beauty as in this ancient land of ours whose annals are rich with literature and legend inspired by the high ideals of our women. So, it is a little unworthy of us that we should talk lightly and flippantly about the capacity of the Indian woman to wear her freedom with dignity. To do so is to confess to a sad lack of understanding of the very genius of our race.

Some resentment has been expressed by hon. Members who have objected to the theory that this Bill should be passed merely because the eyes of foreign countries are upon us. I am in entire agreement with them. However much we may value the goodwill of other countries we cannot and will not shape our lives and legislation to suit anybody else's standards. But there is a far more valid and urgent reason for the passing of this Bill, and that is that our national integrity, our self-respect as people are at stake. Many of the Hon. Members of this House had the high privilege of drafting the Constitution of Free India. Upon them there rests the heavy responsibility of

redeeming the pledges that are embodied in it and so the question of accepting or rejecting this Bill is the simple one of whether we affirm or deny the very fundamental principles on which our Constitution is based.

Shri Brajeshwar Prasad (Bihar) : I rise to offer my unqualified support to clause 2 of the Hindu Code Bill. While doing so, I would like to point out that if this clause is passed it will mean the perpetuation of a great wrong in Hindu society—the *immoral* distinction between legitimate and illegitimate children. The clause says that it applies to any child, legitimate or illegitimate. I know that it is not possible for the State to go to the extent to which I want the Government of India to go. I want the State to abolish the distinction between legitimate and illegitimate children. The stigma of illegitimacy dwarfs the personality of the child. It is inhuman and barbarous that millions of people in this country should suffer from psychological and social handicaps throughout their lives for no fault of their own. It may be urged that the institution of marriage will be weakened if the distinction between legitimate and illegitimate children is obliterated. I submit that the Heavens will not fall if the institution of marriage is weakened in any way whatsoever.

Pandit Maitra (West Bengal) : Does the hon. Member want abolition of marriage ?

An hon. Member : No week-end marriage.

Shri Brajeshwar Prasad : The good that is done to society by marriage is great, but the harm that is done to society by illegitimacy is also very great and serious. I think that it is neither possible nor desirable for the State to strengthen the foundations of a discredited social order. I can very well conceive of a society where there is no marriage. The Platonic ideal of a community of wives and children is as valid a concept today as it was during the days of Plato. If we are sincere about our professions of secularism if we have any faith in secularism—let us be frank with ourselves—we must try to emancipate the institutions of property and marriage from the bondage of religion. It is true that the secular ideal has not been realised in any part of the world.

It is not secularism but Christianity that guides the institutions of marriage and property both in America and Europe. I am of opinion that the institution of marriage will not be weakened in any way if the distinction between legitimate and illegitimate children is obliterated ...

Mr. Chairman : I think the hon. Member may reserve these views to the marriage Chapter.

Shri Brajeshwar Prasad : I am not expressing my views on the marriage Chapter. I am only visualising certain objections that may be raised with regard to my suggestion that the distinction between legitimate and illegitimate children should be obliterated.

Shri T. Hussain (Bihar) : For the sake of information, may I know if my hon. friend is against legal marriage or not ?

Shri Brajeshwar Prasad : If I get an opportunity to speak on the marriage clauses, I am prepared to make the distinction clear. I do not think that the institution of marriage will be weakened if the distinction between legitimate and illegitimate children is obliterated. For, what is the basis of marriage ? Why is the institution of marriage surviving ? It is old age—psychological enfeeblement of the mind and heart—which is responsible for the survival of the institution of marriage. It is not for the pleasures of sex ; it is not for the procreation of children that the institution of marriage exists in society. For, both these objectives can be achieved outside the bonds of matrimony. I am opposed to illegitimacy because it is an important cause of abortion, destitution, prostitution, delinquency, further illegitimacy, premature birth, still-birth, crimes, infanticide, venereal disease and cruelty to women and children.

I am not prepared to give my moral support to an article which tends to perpetuate the gravest crime that is done in our society.

Shri B. Das (Orissa): At the outset I wish to congratulate Dr. Ambedkar on behalf of myself and all those reformists who are Members of this House and reformists outside for the bold step he has taken to codify the Hindu Law. He has shown great forbearance. He has been characterised as the Manu of our age. But he has been following the precepts of Buddha and showing greater forbearance in agreeing that only the Chapters relating to marriage and divorce be taken for the time being. I support the marriage and divorce clauses of this Code.

Great speeches have been made on the floor of the House. On the side of the Bill my hon. Friend Shri Gadgil made an excellent speech ; so also Pandit Kunzru. On the opposite side the speeches that have to be taken notice of are the ones of Dr. Syama Prasad Mookerjee, Sardar Man and my young friend Pandit Govind Malaviya.

Dr. Mookerjee perhaps forgot the fact that the intermediate stage in the line of reformists from Buddha to Gandhiji was held by great Bengalis like Raja Ram Mohan Roy, Keshab Chander Sen and Ramakrishna Paramahansa. It is no good for the Bengali leader to cry a halt to these reforms. That is not the right way. Hinduism has been a progressive religion. The various *Smritis* and *Mimamsa*, are but a codification of Hindu law. As pointed out by my friend Shrimati Padmaja Naidu, who. in her inevitable poetic way paid happy compliments to Dr. Ambedkar, our Constitution has given certain rights to women of India and Dr. Ambedkar is doing nothing more than giving effect to the intentions of the Constitution.

My hon. friend Sardar Man belongs to a great nation, the fighting nation that has saved and maintained the freedom of India. He however struck a discordant note by saying that the Sikhs are not Hindus. I had the privilege of working with many Sikh leaders. Let us, therefore, not harp on our differences on the Hindu Code Bill. But I may say that if the Sikh opinion is sounded, now or hereafter, they would never like to remain stagnant. If and when such

opinions are taken, we will find that Sikh women are for progress and advance.

As regards Pandit Govind Malaviya, I have great affection for him, because I was a lieutenant of his revered and august father, the late Pandit Madan Mohan Malaviya. My memory goes back to the thirties when we were passing the Child Marriage Restraint Act on the floor of the House. The great seer that Pandit Madan Mohan Malaviya was, he saw the signs of the times and although he was sad that this House enacted the Child Marriage Restraint Act known as the Sarda Act, he never opposed it in such violent language and in such words of thunder as my young friend Pandit Govind Malaviya did.

Pandit Malaviya : Because these things were not proposed then.

Shri B. Das: True. But I was only quoting my own leader and his august father that he was for advancement and progress. That is all that I wanted to submit.

Shri A. C. Shukla (Madhya Pradesh) : For those who are weak, you cannot follow the highest ideal ?

Shri B. Das : Those who belong to the orthodox and conservative school in India have helped us in passing the Constitution. They have helped us, though at times a little weakly, in the battle for freedom that we fought for so many years. Since 1947 we are all going forward. If " go forward " is our motto now, then nothing will stop the advancement and progress of India or any section of our community, be it Hindu, Muslim or any other. Therefore, instead of showing that strong difference with us they should settle down to the view that India must progress as a nation, and if we are the first nation in Asia and are going to be the first nation of the world, they will help us to advance and progress and not deter us in any way.

I will conclude my speech by reminding the conservative friends in this House that this advancement of the Hindu Code and marriage laws is not a new thing. We have forgotten recent reformers like Sir Hari Singh Gour or Dr. M. R. Jayakar who have made specific indents into the old traditions and customs of Hindu laws, particularly marriage laws. So it is no use our saying that Dr. Ambedkar threw bombshell and a surprise at our conservative friends. We are progressing and Dr. Ambedkar has done one thing. He has faced the whole problem and not attempted piece-meal legislation. Yet to concede to our conservative friends the House is almost agreed to pass only one part of the Hindu Code Bill.

I support the measure.

Dr. Ambedkar : I think it is an extra-ordinary event in the history of this Parliament and, I believe, in the history of the past Legislative Assemblies that we should have been engaged in the discussion of a single clause for not less than seven days. I do not think there is any parallel to this. But in view of the fact that many Members have raised the point that this Bill touches part of their conscience, our Prime Minister in a righteous spirit has allowed them

and also the Chair, the longest time that any Member might want to consume in order to express his mind on the subject. (*An Hon. Member* : Wrong). I have no complaint against that because it is much better that we should give to every individual, whether he speaks for or against, the fullest opportunity rather than create a feeling in the Members who do not see eye to eye with Government—to go home with a feeling—that they have been choked. I hope that, notwithstanding the fact that seven precious days have been spent in the discussion of this clause, when this clause is put to vote no Member will have a 'complaint on any such ground at all.

Babu Ramnarayan Singh : I have.

Dr. Ambedkar : The debate on this clause has as a matter of fact taken place in two parts. A part of the debate took place in the last session of Parliament, and this is a sort of a supplementary debate to the original debate. I am sorry to say that notwithstanding the fact that I have paid the closest possible attention to the speeches which have been delivered in what I call the supplementary debate it has not been possible for me to find out what new point has been raised in the course of this supplementary debate which was not raised in the original debate. The only new factor which I have discovered in the course of this supplementary debate is the speech made by my friend Dr. Syama Prasad Mookerjee and another by our friend Mr. Man. Beyond that there has been nothing more than an expansive debate on points which were probably touched upon in the original debate.

With regard to Dr. Syama Prasad Mookerjee I have a feeling that it is not necessary to take him seriously at all. He has, it seems to me, no mind of his own.

Babu Ramnarayan Singh: have you ?

Dr. Ambedkar: I have, most certainly.

He was, as hon. Members of the House will know, a member of this Government practically for four years, during which this Bill has been placed before this House by the Government in office. I have not any recollection whatsoever, during the course of these four years when Dr. Syama Prasad Mookerjee was a member of the Government and when the Government had already sponsored this bill and put it before the House and it was in bits being discussed by Members of the House, that there was any single occasion inside the Cabinet when Dr. Mookerjee to my knowledge expressed the slightest difference of opinion on this Bill as against the Government.

Shri Syamnandan Sahaya (Bihar) : Is it open for the Hon. Minister to disclose what happened there or what did not happen there ?

Dr. Ambedkar : I am saying so. I remember also that in the earlier part, there were many party meetings held to discuss what should be done with regard to this particular Bill. I have a very clear recollection that in most of the meetings that were held. Dr. Syama Prasad Mookerjee was present and even then I do not recollect a single occasion when Dr. Syama Prasad

Mookerjee—in the party which is an informal thing and where members of the Government are free to express their personal opinions, which they may not express outside on account of the joint responsibility—ever said anything against this Bill. It is, therefore, as I said, a matter of moods. (*An hon. Member* : Conviction.) Not at all. Either a man has a conviction or he has no conviction. That is my point. (*An Hon. Member* : He has resigned from the Cabinet.) I am sorry to say that he is to my mind a very tragic case, a tragic case of a sober, good well-behaved man, who having joined the company of the drunkards rolls from side to side and has become an inebriate himself.

An Hon. Member : A good comparison.

Dr. Ambedkar : Secondly, I have been noticing the performances of Dr. Syama Prasad Mookerjee ever since he has left the Government and has become a member of the Opposition, in fact almost a leading member of the Opposition and I have noticed that he has developed the unfortunate mentality which sometimes Leaders of Opposition develop, namely to oppose everything that comes from Government. In view of that, when a person is not prepared to discuss matters on merits but wants to oppose for the sake of opposition, it is, I think, hardly worth one's while to waste one's time and breath in order to meet his argument. As I said, that is the reason why I do not propose to take what Dr. Syama Prasad Mookerjee has said in a very serious manner.

I, therefore, propose to deal only with the general points that have been raised by various speakers against clause 2 and generally against the Bill. The first point which perhaps is a new point is this, that there is really no necessity for the sort of Bill that we had brought forward. It is contended that the Hindu Society is a very ancient society, much more ancient than the Roman or the Greek Society and perhaps as old as the Egyptian Society. It has been contended that today all that we know about the Roman Society or the Greek Society or the Egyptian Society is their history; they no longer exist; they have disappeared. The only ancient society which has survived is the Hindu Society and if the Hindu Society has survived while all other ancient societies have disappeared, then its laws, its social structure, its principles must be good. Otherwise, it could not have survived.

This is not the first time that I have heard this argument. I have heard this argument a long time ago and not only heard it from men in the streets, but men who have been occupying most eminent positions such as those who are called the historians of India. This is an argument which had been presented all the time by those who believe in the sanctity of the ancient structure of this society. I must very frankly say that I too have been a student of India's history, although I cannot claim that I am as good a student as many others who adorn the chairs of history in many of our universities. I believe, I have a sufficient understanding of the Indian history and the point that I would like to raise is this. Is survival enough or whether it is necessary for us

to consider whether the plane on which we survived is more important than the mere survival itself ? A man who mixes with his opponent in battle vanquishes him, obtains victory on him also survives. A man who meets his opponent, runs away from him like a coward and he also survives. Is the survival of the victor of the same value, of the same character as the survival of a coward ? I think we ought to consider this question on what plane has the Hindu society survived. (*An Hon. member* : Survival of the fittest). Yes, but on circumstances. Here my friends will forgive me saying so, when I examine the history of India, we have survived, yes, but we have survived as people who have been from time to time subjugated, vanquished and enslaved. (*An Hon. Member* : Who has not been ?) Yes. My. Hon. friend asks me the question " who has not been ? " There are many countries and many communities who have lost in battle, who have been enslaved but I would like to remind my Hon. friend that if he studies the history of all vanquished people, he will realise that some day, at some time, the vanquished people on other parts of the world have tried to achieve their liberty. I have not seen any such thing in this country. Therefore, the argument that merely because we have survived when other countries have lost and gone into history is one which does not convince me of the goodness or the soundness of the social structure under which we have been living. It has been said that the Hindu society has been a very progressive society. It was an argument which my Hon. friend. Dr. Syama Prasad Mookerjee expatiated at great length and he pointed out that so great a radical reformer like the Buddha was accepted by the Hindu society as a great figure and not only they accepted him as a great figure but they adopted and accepted some of the principles which he advocated in his life.

It is no doubt one of the great qualities of Hindu society to absorb some things from those who oppose it. But, my point is this. Has the Hindu society changed its structure as a result of the absorption of the doctrine of their opponents ? Let me develop the position with regard to the Buddha. What did he preach ? He preached equality. He was the greatest opponent of *chatur vama* ; he was the greatest opponent of belief in the *Vedas* because he believed in reason and did not believe in the infallibility of any book. He believed in *ahimsa*, the Brahmanic society accepted some things. What did they accept ? They accepted the most innocuous dogma of *ahimsa*. Nobody was prepared to accept and they did not accept—they opposed—his belief in equality. Notwithstanding the fact that it has absorbed bits and bits of something which is of an innocuous character it did not touch the main thing on which they were all united namely to maintain *chatur vama*. That is the reason why notwithstanding this assimilative and adaptive quality, they have remained what they have always been. We have for long number of years waited to see whether Hindu society would, as a result of the absorption of the doctrines preached by great men who have been born in this country or

great men born outside the country, change its social structure. Most of us, speaking for myself, have been completely disappointed. Whatever else Hindu society, may adopt, it will never give up its social structure for the enslavement of the *Shudra* and the enslavement of women. It is for this reason that law must now come to their rescue in order that society may move on.

Pandit Malaviya: Move on to what even Buddha could not do.

Dr. Ambedkar : People have been saying that Hindu society has been changing. The question that I want to ask is this. Is this change in the direction of progress or it is a change in the other direction ? Any one who has studied the history of Arya society from the very beginning to the present day will have to admit, if he is a fair student of history, that whatever change has taken place, it has been a deterioration. There was, as everybody knows, no caste system among the Aryans. There may have been some kind of *vama* system; but the *vama* system never came in the way of inter-marriages. You can find many number of cases of Brahmans marrying untouchable women. *Kashatriyas* marrying *shudras* and *shudras* marrying upper class women.

Pandit Malaviya : Which were the instances ?

Dr. Ambedkar: I can give many instances if you will come to my room. I have got them.

Pandit Malaviya : Why not now ?

Dr. Ambedkar : But, the Aryans never had a hide-bound social system of class division that was later introduced. Nobody can deny that has been a subsequent change.

You examine the position of Hindu women. Our Hon. friend Dr. Maitra. I think, who was a member of the Rau Committee, for the purpose of a thesis for a Doctorate degree of the Calcutta University wrote a book called *The Position of Women in the Hindu Shastras*.

Any one who reads this book will find that women had an equal share in property with men. She was entitled to hold property. Even in Manu you find this statement. Today, what do we find as a result of the changes that have taken place in the Hindu society ? Women are completely deprived of property. Do you call this change progress or do you call it deterioration ? Therefore, it is time, I think that we consider this question in a different light, the point on which I wish to proceed is the fact that unless law makes society move, this society will not move.

Another argument which was presented to the House was this : that we have no policy ; we have no principle ; we have nothing on which we are proceeding; the only thing on which we are proceeding is a kind of imitation of the western nations. It is said that because the western nations have monogamy, because the western nations have divorce or because the Chinese are trying to do something along that direction, we, in order to put

ourselves in the good books of the world at large, are trying to do something along the lines which they have been doing. They have said that our ideal should be, what ? Somebody said Ram; somebody said Dasaratha; somebody said Krishna; somebody said this, that and the other. I do not wish to comment upon any of the ideals which have been presented to the House, and I do not...

Shri Syamnandan Sahaya : You will be well advised not to do so.

Mr. Chairman: Order, order.

Dr. Ambedkar : My ideals are derived from the Constitution that we have laid down. The preamble of the Constitution speaks of liberty, equality and fraternity. We are therefore bound to examine every social institution that exists in the country and see whether it satisfies the principles laid down in the Constitution. Now, so far as your sacramental marriage is concerned, forgive me, I am quite convinced in my own mind that no man who examines that institution in a fair, honest and liberal spirit can come to the conclusion that our sacramental marriage satisfies either the ideal of liberty or of equality. What is the sacramental ideal of marriage ? Sacramental ideal of marriage described in as few words as possible, is polygamy for the man and perpetual slavery for the woman.

An Hon. Member: Wonderful description.

Dr. Ambedkar: That is so because under no circumstances can a woman get her liberty from her husband, however bad he may be, however undesirable a person he may be. I want to put one question to the House. Are we for slavery or are we for free labour ? What are we for ? Now, in all economic matters, we have all along been insisting that there must be free labour. Slavery we shall not tolerate.

An hon. Member: Is this slavery ?

Dr. Ambedkar : Now, what is the difference between slavery and free labour ? I think if you examine it carefully, you will come to the conclusion that free labour means the ability and the capacity to break the contract when the necessity for breaking the contract arises.

Shri R. K. Chandhari (Assam): And is this a contract ?

Dr. Ambedkar: Yes, I shall come to that. Therefore, if the woman under the sacramental marriage is to get her freedom, then circumscribe as you may, the conditions for her getting her freedom, and as I said, I shall be quite prepared to consider any proposal that may be made by any Member from any side of the House to narrow down the conditions of divorce that have been prescribed in the Bill as it stands. But if you mean to give liberty— and you cannot deny that liberty in view of the fact that you have placed it in your Constitution and praised the Constitution which guarantees liberty and equality to every citizen—then you cannot allow this institution to stand as it is. That is the reason why we are proceeding with this Bill and not because we want to imitate any other people or we want to go in for our ancient ideals

which are to my judgement, most archaic and impossible for anybody to practice.

Dr. C. D. Pande (Uttar Pradesh): We are ready to support the Bill, but we do not want these invectives. How far the Hon. Minister is justified in dealing with this subject and resorting to such invectives. I do not know ?

An hon. Member : Why vilify the Hindu religion ?

Dr. Ambedkar : Now, I come to the specific amendments that have been tabled by various Members to clause 2.

Shri Krishnanand Rai (Uttar Pradesh) : The House is for divorce and monogamy, but not for this kind of abuse.

Dr. C. D. Pande: We are for these provisions, but we do not want these abuses and invectives.

Dr. Ambedkar: If you had said that before, I would not have made this speech at all and not spent seven days over this Bill.

The Prime Minister (Shri Jawaharlal Nehru): I am rather surprised at the tender skin of some of the hon. Members. We have had to put up with a series of speeches and things have been said

which have hurt us very much. If that has not been objected to, then I think it is expected that those who disagree with Dr. Ambedkar should not object now.

Pandit Maitra : We have been listening with rapt attention to Dr. Ambedkar, but what we do not want is these invectives and reflections on some of the best ideals which we cherish. The provisions can be defended without injuring the religious susceptibilities of Members.

Mr. Chairman : I do not think there is any need for excitement. As the Prime Minister has said, many Hon. Members who had spoken had said so many things, and naturally when the Hon. Law Minister is replying, he has to make certain statements, and he deserves to be heard.

Dr. Ambedkar : Now, I come to the specific amendments that have been tabled to this clause. As you will observe (*Interruptions*).

Mr. Chairman : I do not want side conversations to go on across the benches.

Dr. Ambedkar : There is one general amendment, that this Bill should be made optional. This amendment has taken various shapes and forms. In one shape it means that the Hindus to which this Bill is made applicable, should be allowed option either to have it applied to them or not be applied to them. Another shape in which the same amendment has come is that if any other people, such as for instance the Muslims, to whom this Bill does not apply, desire that the Bill should be applied to them, there should be provision in it to that effect. The other shape which this amendment takes is that it should be left to the States to apply or not to apply this Bill. Now, I will deal with the general amendment in all the three shapes in which it has been presented to us.

With regard to the first aspect of the matter, that its application even to the Hindus should be optional. Last time, the Deputy Speaker came to the rescue of many Members by pointing out that there was a precedent for a thing like this. I think hon. Members will remember that he referred to the *Shariat* Act and the Khoja Momin or Khoja Act, and therefore, he said there was no danger or anything strange in making a similar provision so far as the application of the Bill to the Hindus is concerned. Since that time, I have spent much time in examining whether the statement made by the Hon. Deputy Speaker— I am sorry he is not here—is true in fact. And I find that this has been a sort of lapse of memory on his part.

Shri Syamnandan Sahaya: Are you criticising the Deputy Speaker's ruling or are you criticising the remarks of Shri Ananthasayanam Ayyangar ?

Dr. Ambedkar: I am dealing with the statement of Shri Ananthasayanam Ayyangar. I am glad the hon. Member is so technical today.

Shri Syamanandan Sahaya : I am, so all the time. But the Hon. Minister is taking advantage of his position as a member of the Cabinet.

Dr. Ambedkar: I find that in the course of the debate on the Bill which took place in the year 1937, my Hon. friend Shri Ananthasayanam Ayyangar himself raised this question about the applicability of the Bill and I find that his speech is spread over practically to two pages here. As I said, he raised this very question whether that Bill was going to take away the option that was given to the Khojas. He put this question direct to Mr. Jinnah, because as the House will remember, the *Shariat* Bill was not a Government Bill. It was a private Member's Bill which was brought in and practically Mr. Jinnah was in charge of that Bill. And Mr. Jinnah had given an absolutely categorical answer to Shri Ananthasayanam Ayyangar that not only was that Bill compulsory, but even the option given to the Khojas would be taken away by that Bill.

Pandit Maitra: Why not inform the House of the background of that Bill also ? I was there when the Bill was being discussed and I know that Mr. Jinnah wanted the Muslims not to be governed by any Hindu law at all.

Dr. Ambedkar : I can give the book, it is here, and anyone who wants to read the whole debate can do so. I cannot spend any more time on this because I have to deal with the amendments.

Shri J. R. Kapoor: That debate is of which year ?

Dr. Ambedkar: 1937. The only difficulty that ...

Shri Bhatt : Was that *Shariat* Bill passed, or referred to a Select Committee or dropped ?

Dr. Ambedkar: The Bill was passed and it was decided that no option was to be given.

The only difficulty that arose was that when they introduced clause 3, it was introduced in the House without the assistance of the draftsman and what happened was that they introduced the word " Act " instead of referring to it as " clause ". That defect was cured by my friend Mr. Kazmi, who brought in a

Bill in 1943 and substituted the word

" clause " for the word " Act". Therefore, the ground that there is a precedent, I submit, falls through.

[12 Noon]

Shri J. R. Kapoor : May I bring to the notice of the Law Minister that this Act of 1937, I suppose, repeals the previous Kutchi Memon Act, according to which option was given and what the Deputy Speaker as a Member of this House brought to notice was that there was, in fact, in force for a number of years a legislation which gave option.

Dr. Ambedkar: That was before, that was taken away.

Shri J. R. Kapoor : All the same for a number of years that sort of legislation did hold good. That was the point made by him.

Dr. Ambedkar : We are discussing the question whether the 1937 Act gave an option. That is the point.

Shri J. R. Kapoor : Mr. Ayyangar's point was that the 1923 Act gave the option.

Dr. Ambedkar : I am sorry I cannot give way.

Mr. Chairman : If there is any inconsistency in the speech hon. Members may bring it up at a later stage, when there will be a good deal of opportunity.

Shri Amolakh Chand: What is the latest position now ?

Dr. Ambedkar: No option.

Shri Nariruddin Ahmad: There was option for a long time.

Dr. Ambedkar: For Cutchies.

I will take the proposal to grant option. Apart from precedents what would be the consequences ? Suppose we adopt this proposal of giving option. Hon. Members will remember that there are certain States like Bombay and Madras, where the legislature has enacted laws regulating marriage and divorce. In those two Acts there is no option whatsoever given. They are compulsory on every body who resides or is domiciled there. If we adopt this law, it being a central law, it will supersede the laws of the provincial legislature in so far as it is inconsistent with those laws, by reason of the fact that this is legislation in the concurrent field. The one consequence will be that whatever progress the States of Bombay and Madras have achieved in the matter of monogamy and divorce will be completely destroyed.

Shri Gautam (Uttar Pradesh) : What will be the position of the Muslims in Bombay ?

Dr. Ambedkar : It applies to the Hindus only. I will shortly come to the Muslims, do not worry. I will not run away from the point. Therefore, the one consequence will be that the two States which have achieved a certain degree of social advancement will be set back.

Shri J.R. Kapoor: Keep it alive.

Dr. Ambedkar : How can you ?

Shri J. R. Kapoor : By saying " Save and notwithstanding anything

contained herein this Act will ... "

Dr. Ambedkar : That will be fantastic legislation just to satisfy my hon. Friend. So this consequence has also to be taken into consideration.

What is the position today ? Certain States have laws relating to monogamy and divorce. Certain other States have no such legislation. The one thing that has to be remembered is that under our Constitution no State has got extra-territorial jurisdiction. The law applies either to the resident when he is resident there or to a person who is domiciled. If a person marries in Bombay he shall have to marry under that State's Act. If he wants to divorce his wife on grounds which are not permitted by the Bombay law, he can easily go to U.P., where no such law exists, divorce his wife and marry again, thereby altogether destroying the validity of the Bombay legislation. It is something like prohibition. An isolated State cannot have prohibition. If it is to be there it must be all through, so that no man can go to another State and break the law of the State in which he resides normally. Therefore, in this case either there should be no legislation and leave things as they are or if you want legislation, it must be an all India legislation, so that no man or woman would be able to break the law.

The third difficulty is that although they have tabled amendments to the effect that option should be given, they have not indicated the nature of that option. Are women to have the right to make an option or not ? If the father makes an option that this law applies to him, does his option apply to his son and progeny ? If the husband makes an option under this law, will it apply to his wife by reason of the fact that she is his wife ? If the husband does not apply it to himself, will the wife be free to do so?

Shri Bharati (Madras): All confusion.

Dr. Ambedkar : It would be utter confusion, if such an amendment was adopted.

Shri J. R. Kapoor: What does the proviso to clause 2 say ?

Dr. Ambedkar : I am afraid I cannot add any such proviso. Our law maybe deformed in some way but it should not altogether be unaesthetic; It must be good to look at.

I now come to the other aspect of the argument, namely of allowing other people to have the law apply to them. I should not have dealt with it but for that fact that Dr. Mookerjee referred to the fact that this law was not made applicable to Muslims. He charged the Government with either want of sincerity or want of courage that they can never bring such a legislation so far as the Muslim community is concerned. With regard to this matter. Members have said that we are enacting a piece of legislation which is discriminatory for the simple reason that the Hindus today have the right to marry more than one woman and the Muslims have a right to marry four but that we are taking away the right of the Hindu leaving the right of the Muslim unaffected. That they say, is discriminatory. With all respect I would invite the attention of

Members to article 25 of the Constitution, which says:

" Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess practise and propagare religion. "

I want to draw the attention of Members to the words " the right freely to profess and practise their religion ". I am not concerned for the moment with propagation of religion.

Last time when I spoke on this Bill, I made it quite clear that in our country, fortunately or unfortunately, the profession of a particular religion carries with it the personal law of the person. You cannot get away from that position. Similarly, when you say to a Muslim that under the Constitution he is free to profess and practise his religion, we are practically giving him the right to practise his personal law. In view of the fact that the Constitution allows different communities to practise their religion and incidentally also to have their personal law, there is nothing discriminatory in allowing one community to have their own law or to modify it in the way they like and to treat the law of the other community in a different way or to modify it.

Pandit Thakur Das Bhargava (Punjab) : According to Hindu law a person can marry more than one wife, according to Mahommedan law also a person is entitled to have more than one wife, but there is no obligation on any Muslim to have more than one wife nor is there any obligation on any Hindu to have more than one wife. The personal religion of both is the same on this point. Similarly, it is not enjoined upon a Mussalman to practise child marriage, nor is it enjoined upon a Hindu to practise child marriage, for the *Smriti* and the *Hadis* of both say the same thing on this point. Therefore, the Child Marriage Act was applied to the Muslims also. It is not going against the Muslim law or the *Shariat* law if we make this law applicable to them today. So far as article 25 is concerned you will not be following this

Dr. Ambedkar: I am answering the other argument that we are making a discrimination. To that I am giving the answer that the Constitution permits us to treat different communities differently and if we treat them differently nobody can charge the Government with practising discrimination. That is the point. That being so, another thing I would like to tell the House is that article 25 is an article of great importance, for this reason. As the House will remember, all throughout the history of Europe there has been a great contest between the Church and the State. The State has said that the Church shall not interfere in religion and that the State is supreme over Church. The Church, on the other hand has said that the State is subordinate to the Church, it is only when the Church permits that the State can enact. That has been the general position. In our Constitution we adopted a middle course; the course that we adopted was this, that while we will permit people to practise and to profess their religion and, incidentally, to have their personal law because the personal law is so imbedded in their religion, yet

the State has retained all along in article 25 the right to interfere in the personal law of any community in this country. There can be no argument against that. That is my point. The only question is the time, the occasion and the circumstances.

I want to assert in this House while I am here that I shall hear no argument from any community to say that this Parliament has no right to interfere in their personal law or any other laws. This Parliament is absolutely supreme and we deal with any community so far as their personal law is concerned apart from their religion. Let no community be in a state of mind that they are immune from the sovereign authority of this Parliament.

Shri A. C. Shukia: You pass a law but cannot administer it.

Dr. Ambedkar: The point really is a very narrow one and that point is this ;whether right now we should make our Bill applicable to the Muslims—the Hindu Code Bill which has been professedly, deliberately, calculatedly intended to apply to what is called the Hindu community.

Shri J. R. Kapoor: Non-Hindus also.

Dr. Ambedkar : We have been, in making this kind of a legislation, observing a certain necessary procedure as a condition precedent. In all social legislation the Government usually—as a matter of convention and, if I may say so, binding convention—observes the rules of consulting the people affected before any particular piece of legislation is undertaken. Hon. Members well know that with regard to this very Bill there was a Committee which went round from Province to Province, from State to State, took evidence from every section, every community, individuals, organised people, to find out what their opinion was. Nobody can say that so far as this particular Bill is concerned, any Committee or Government at any time consulted the Muslim community—that we are going to enact monogamy and reform the law of divorce so far as the Hindus are concerned, that these are the provisions that we propose to apply to them, what have you to say about it ? No such step has ever been taken and I think it would be not only unwise but a most tyrannical piece of political action to subject the Muslim community to any such provision without their being consulted beforehand.

Pandit Maitra: Why did you not do it beforehand ?

Dr. Ambedkar: The reason why we did not is because some communities like the Hindu community needed the reform so badly— it was a slum clearance.

Pandit Maitra: You had not the courage to do it.

Dr. Ambedkar: This is a slum clearance.

Shri Syamnandan Sahaya : Did you consult the Sikh community ?

Dr. Ambedkar : Oh, yes. I am dealing with it. Do not be impatient. I have consulted them. Do not you make a mistake.

Shri Bhatt: Can the Hon. Minister state, whether or not, if Parliament so desire, the opinions of Muslims and Christians may still be ascertained ?

What is the obstacle to it ?

Dr. Ambedkar : The obstacle is that the meal has now been served on the table. Let us take it now. It will take time in inviting others. At the same time we do not have so much food as may be offered to others.

Mr. Chairman : I do not want Hon. Members to go on interrupting throughout the length of the debate.

Shri Bhatt: These are sweets which can stay for days together.

Dr. Ambedkar: Regarding the other part of the option, namely that it should be left to the States, in one aspect I have already dealt with it. Suppose some States enact such laws and some States do not, the chaos to which I have already referred would be there and I do not think we could allow any such option to States which would result in chaos in such fundamental matters as marriage and divorce. In this connection I should like to say this that although it is true that the Rau Committee did not visit the Part B States, still when the informal conference took place, I did take care to invite certain representatives of the Part B States. One of them was the Chief Justice of Saurashtra, the Advocate-General of Mysore, I think, was there ...

Shri Bhatt : How is it that the Chief Justice of Saurashtra is taken to represent Part ' B ' States ? He was in the service of the State.

Dr. Ambedkar: He knows the conditions prevailing there). We have done that. Now I come to the question of the Sikhs. My friend, Syamnandan Sahaya has gone away somewhere ...

Shri Syamnandan Sahaya: I am here, very much so, Dr. Ambedkar.

Dr. Ambedkar : Now I come to the question raised by my friend, Mr. Bhopinder Singh Man. His amendment is that this Bill should not be applied to the Sikhs. Well. I have nothing personal to say about this amendment because his amendment is not in any sense solitary as compared with the other amendments which have been tabled by our friend, Mr. Naziruddin Ahmad omitting the Buddhists, Jains, Sikhs, and so on. It is perfectly legitimate for anybody to put forth his view point, but I think the Hon. Member will allow me to say that the tone of his speech was to me very repugnant and I think hurt me a great deal.

Sardar B. S. Man: *rose*—

Mr. Chairman : I do not want Hon. Members to go on interrupting him.

Shri Syamnandan Sahaya : If the Hon. Minister indulges in such remarks against those who oppose the Bill, we are entitled to interrupt him.

Mr. Chairman: Order, order.

Shri Syamnanda Sahaya : If he goes on like that, the situation may become worse.

Dr. Ambedkar: I am entitled to express my opinion.

Mr. Chairman: Order, order.

Shri R. K. Chaudhari: Why don't you ask the Minister to sit down ?

Mr. Chairman : What is the meaning of this ? There is a regular uproar.

Hon. Members must maintain order.

Shri R. K. Chaudhari : If the Hon. Minister does not sit down, does that mean order ? You only want to control us; not others.

Dr. Ambedkar: My point is this (*Interruptions*).

Sardar B. S. Man : I take his retort in a sporting spirit. His speech is equally repugnant to us today.

Dr. Ambedkar: I am prepared to accept that.

Mr. Chairman : All that I can say is that Hon. Members should have left it to the Hon. Members concerned to whom the Minister's remark refers.

Dr. Ambedkar : My point is very simple. There can be no dispute that Indians as such are excluding the Muslims ...

Shri Sondhi (Punjab): They are not Indians. Is that so ?

Dr. Ambedkar : Let me go on in that way, because I do not find exact qualifying words. We non-Muslims, so to say, are not a very united family. I do not think it is desirable to take an unrealistic view and say that we are all one. We are not. But I do say that we ought to make an attempt to come together as far as we possibly can, and we ought not to sow the seeds of discord all the time. When anything of a unifying nature comes before the House, if somebody gets up and says. " Well, we do not belong to this group and we do not want to be governed by this law " ...

Sardar Hukam Singh (Punjab): Why did you not appeal to the President when he was making a declaration as to who would be the Scheduled Castes ? He has made that distinction.

Dr. Ambedkar: It may have been done because of his generous spirit, if you will remember what happened.

Now, that is what I do not like. In my judgement, we ought all of us to make a very sincere attempt to come together, at any rate. Each one of us may have our religious beliefs. One may believe in a God and one may believe in a soul. Those are spiritual matters. But is it not desirable that notwithstanding the differences that we may have so far as our beliefs are concerned, we should try to evolve one single system of law by which we may be bound in our interrelations?

Sardar Hukam Singh: Should this not start from you ?

Dr. Ambedkar: Why should you all the time keep on saying. " I am different. I am not governed by this and I am not governed by that. Therefore, do not make your law binding upon me ". That is the point of my protest.

Shri A. C. Shukla: Natures differ.

Dr. Ambedkar: The gravamen of my hon. Friend Sardar Man's charge was this that the Sikhs have not been consulted in this matter. My answer to his point is two-fold. If the Sikhs, have not been consulted as Sikhs my contention is that there was no necessity to consult them ...

Sardar B. S. Man: Oh !

Dr. Ambedkar: Please let me continue.because all along the law has

assumed that the Sikhs -for the purposes of law are Hindus. I have examined Mulla's *Hindu Law* which is a very handy volume and if my hon. Friend were to refer to the index to that volume he will find certain Acts passed by the Legislative Assemblies of this country to amend the Hindu Law, he will find any number of them. But I would like my hon. Friend to point out to me whether in respect of any of those laws, which have been enacted by this Parliament effecting a change in the Hindu Law—and made applicable to the Sikhs—they ever consulted the Sikhs or they ever omitted the Sikhs.

Sardar Hukam Singh: Because custom prevails there.

Dr. Ambedkar: I do not find any such instance of consultation at all. Whenever a law has been passed to amend the Hindu Law, it has been made applicable to all persons who have been by frequent judicial interpretation included in the term 'Hindu'.

Pandit Maitra: Then what is the necessity of putting it here?

Dr. Ambedkar: Because men like you might doubt. Now I come to the other part and wish to prove that the charge that the Sikhs were not consulted is not founded on facts. I have taken the trouble of going through the evidence taken by the Rau Committee when it toured and went to Lahore. I find that the following persons appeared or made statements before that Committee. The first person to whom I wish to refer is Justice Teja Singh of the Lahore High Court. He, as a member of the Punjab High Court, wrote a statement for the Rau Committee. I have gone through the main part of it but I have not found any single statement by Justice Teja Singh that this law should not be applied to the Sikhs. I do not know whether my hon. friend accepts that Justice Teja Singh has some right to speak in the name of the-Sikh community.

The other gentleman whose name I find from the records is Sardar Varyam Singh. He came as a representative of the Akali Darbar and no doubt he said that this Bill should not be applied to the Sikhs, because the Sikhs, he contended, were a more liberal people.

Sardar Hukam Singh: Who was this gentleman? Is there any description given about him?

Dr. Ambedkar: Secretary of the Akali Darbar—that is the description that has been given in the records.

The other person who had given evidence before the Rau Committee was Sardar Iqbal Singh. He was a lawyer and he came in his individual capacity.

(Mr. Deputy Speaker *in the Chair*)

Sardar B. S. Man : What did he say?

Dr. Ambedkar: He said nothing.

Sardar Hukam Singh: Then he can be safely quoted!

An hon. Member: Let him read his statement.

Dr. Ambedkar: Here is the record. You can have the whole information you want. He said nothing against this Act being applied to Sikhs.

Then Sardar Harnam Singh, at present Judge of the Punjab High Court,

came and gave evidence, not in his capacity as a Sikh but in his capacity as a representative of the Bar Council. There again, he raised no such question at all that it should not be applied to the Sikhs.

Sardar Hukam Singh: But what was his opinion about the Hindu Code Bill?

Dr. Ambedkar: He has not opposed it.

Now, I come to an important circumstance to which I would like to make definite reference. The House will remember that after the Bill was introduced in the House by Mr. Mandal—and it was introduced after the Rau Committee's investigation was complete—even then Government promised that they would issue an executive circular to the various provincial Governments and invite their opinion on the Bill as introduced. That circular was also sent to Punjab.

Shri Sondhi: In what year was that ?

Dr. Ambedkar: 1947.

Shri Sondhi : Before the partition ?

Dr. Ambedkar : No. After the partition, because the letter has been issued to the East Punjab Government. I will give the substance of the letter from the Home Secretary to the Government of East Punjab to the Secretary to the Government of India, Legislative Department, New Delhi, No. 211, dated the 3rd October 1947. In that the following statement is made:

" I am directed to forward a copy of the letter so and so from the Registrar of the High Court of Judicature, Lahore, reporting the views of the Hon. Judges, etc. The Punjab Government also invited the views of the Commissioners and Deputy Commissioners, the High Court Bar Association, and five divisional headquarters, as well as of the nine selected non-official organisations believed to be representative of the Hindu and Sikh opinion. Only one of the latter Shri Sanathan Dharma Prathinidhi, Lahore, replied. " I do not think in the face of this my hon. friend can say that no attempt was made to canvass the opinion of the Sikh community. My Hon. friend also said that of the seven members consulted six opposed it. He may be knowing something more about it. I am however entitled to say that before my Hon. friend made his speech, I had one or two conversations with him. He told me that he was particular about the Anand marriage, or the customary ceremony and I told him that although we were passing this Bill, we are not abrogating the Anand Marriage Act which has been passed by the Assembly in order to regularise certain ceremonies which the Sikhs perform for the solemnisation of their marriage and I thought that he was perfectly satisfied with that. But it may be that some other reason has come to the surface which has made him to give rise to these hidden feelings which otherwise might have remained locked up in his breast.

My. hon. Friend read out a judgement of Dr. Bakshi Tek Chand— it is reported in 10 Lahore. Kabul Singh's case. I have examined the facts of this case and the rationale of the case. The only point of dispute was whether a

marriage between a *Jat* Sikh and a *Mazhabi* woman was a legal marriage or not. It was contended on the other side that it was not a legal marriage because the *Jat* belonged to a superior class and the woman belonged to an inferior class and inter-caste marriages were not allowed. Mr. Justice Tek Chand held that the *Jats* were *shudras* and the rule that applied to *thraivarani* did not apply to *shudras* and the untouchables are treated by *Shastras* as *shudras*. It is a marriage between *shudras*. Therefore, it is valid.

Sardar B. S. Man : There is difference between an untouchable and a *shudra*.

Dr. Ambedkar: But that is the decision of the court, my hon. friend. The courts have treated both as *shudras* and you know very well there is distinction on that point.

The only point on which my hon. friend could rely was that the Sikhs are liberal and that they do not observe caste. Well, on that ground he ought to welcome this, because we are abrogating caste throughout. Therefore, it is in no sense in conflict with what is happening in the Sikh community.

Sardar Hukam Singh : Our complaint is that we are far in advance of the stage to which you say you are bringing us up. Please do not pull us down.

Dr. Ambedkar: Different people have different notions about advancement and I have my notions about it. Advance may also mean no law—anarchy—that also may happen. I think I have dealt with all the points that have been raised by the various speakers on their amendments.

Pandit Thakur Das Bhargava : Are you not perpetuating the caste system by accepting the proposal that caste *panchayats* should decide divorce cases ?

Dr. Ambedkar : Why talk about it when we have not reached it ? We have not reached that. We shall see it then. For the moment I have dealt with all the points and given reasons why it is not possible to accept any of the amendments proposed by hon. Members. The only amendment that I am prepared to accept is the amendment moved by Dr. Bakshi Tek Chand by which he proposes to substitute the word " followers " for " members " .

Shri Naziruddin Ahmad : May I have your permission to correct a mistake which has crept into the debate in the speech of Dr. Ambedkar ? (*Interruption*).

Mr. Deputy Speaker : If he makes any particular mistake it is for him to correct it. The hon. Member will point it out to me. It is not necessary to speak on that. Exception of that kind can be taken to whatever he has said in his speech but it is not our business to go on correcting the speeches.

There are a number of amendments that have been tabled. Hon. Members might have forgotten what the amendments are that have been moved. I have, therefore, put these amendments into groups according to the subject matter and also according to the clauses.

The Minister of Works, Production and Supply (Shri Gadgil) : There are

two amendments moved to this clause by the Hon. Minister himself.

Dr. Ambedkar: There are only two amendments.

Mr. Deputy Speaker: I am referring to all the amendments. Certainly, those amendments which the Hon. Minister has himself moved and the one standing in the name of Dr. Tek Chand which the Hon. Minister is willing to accept, will be borne in mind. It is my duty to place before the House what exactly the amendments are on which they are called upon to vote for or against. Instead of going into the details, and for purpose of convenience, I shall put the amendments in each group one by one. I shall take the group: " application to all Indians compulsorily ", that is not only to Hindus but Buddhists, Jains, non-Hindus, Muslims, Christians etc. who come under the operation of this Bill.

The question is:

For clause 2, substitute :

" 2. *Application of Code.* —(1) This Code applies to all Hindus. (2) The expression ' Hindu ' in this Code shall, unless otherwise provided, mean a citizen of India.

(3) Notwithstanding anything contained in the Special Marriage Act, 1872 (III of 1872), this Code shall apply to Hindus, as defined in that Act, and whose marriages have not been solemnized under the provisions of that Act prior to the commencement of this Code. " The motion was negatived.

Mr. Deputy Speaker : The question is:

For clause 2, substitute :

" 2. This Code applies to all Indians irrespective of their religion, caste, or creed. "

The motion was negatived.

Mr. Deputy Speaker : Shri Jhunjhunwala's amendment for substitution of clause 2 is barred as the House has already decided upon this.

Then, I come to the other set: that this Code should apply only to those who make a declaration, and even then, the parts that are declared should apply.

The question is:

For clause 2, substitute :

" 2. *Application of Code.*—This Code or any part or parts thereof applies to all the citizens of India that is Bharat, who after attaining the age of majority, declare in writing that they shall be governed by this Code or any part or parts thereof, as the case may be, and get such declaration registered in accordance with rules prescribed for the purpose by the Central Government. "

The motion was negatived.

Mr. Deputy Speaker: The next two amendments of Shri J. R. Kapoor also go with his amendment negatived just now. They are also therefore deemed to be negatived. Then, the question is:

In the amendment proposed by Shri Banarsi Prasad Jhunjhunwala, in the

proposed proviso to clause 2, for the words beginning with " unless such persons " to the end, substitute:

" unless such person, after attaining the age of majority, declares in writing that he or she, as the case may be, shall be governed by this Code, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government. " The motion was negatived.

Mr. Deputy Speaker: The question is:

To clause 2, add the proviso:

" Provided however, that notwithstanding anything contained in the above clauses, this Code shall not apply to any person, unless such person got his name registered with such authority, and in such manner, as may be hereafter prescribed by Parliament, within one year after this Code comes into force, and in case of a minor within one year after such minor attains majority. " The motion was negatived.

Mr. Deputy Speaker : The question is:

To clause 2, add the proviso :

" Provided that the provisions of Parts II or/and VII relating to marriage and divorce, and succession shall not apply to any person unless such person, after attaining the age of majority declares in writing that he or she, as the case may be, shall be governed by the said provisions, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government. Provided further that the provisions of Part II relating to marriage and divorce shall apply to such declarant only when both the bride and bridegroom before the marriage, or both the husband and wife after the marriage, make such a declaration. "

The motion was negatived.

Shri J. R. Kapoor: Sir, in view of the changed circumstances of the case, I would request leave of the House to withdraw my amendments Nos. 97 and 272. But all the same I would like to move at a later stage, an amendment, when we know how exactly this Part stands when we have gone over the whole of this chapter relating to marriage and divorce. The amendments were, by leave, withdrawn.

Deputy Speaker : Then there is amendment No. 336 standing in the name of Shri J. R. Kapoor. Does he want me to put it ?

Shri J. R. Kapoor : Yes, Sir. and I hope the Hon. Law Minister will please go over it and see what it means, otherwise there will be difficulty in enforcing what he wants to enforce.

Mr. Deputy Speaker : Why at this stage. All persuasion has already been done. The question is:

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3 in the proposed amendment to clause 2, after part (1), insert:

" (1A) in sub-clause (3) for the words ' the provisions ' the words ' any or more of the provisions ' be substituted. " The motion was negatived.

Mr. Deputy Speaker: The question is:

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1) insert :

"(IA) in sub-clause (3) insert at the end ' in respect of any or more of the matters dealt with herein ' . " The motion was negatived.

Mr. Deputy Speaker: Now I take another topic—inclusion or exclusion of categories of people. The question is:

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in part (1) (ii) of the proposed amendment to sub-clause (1) of clause 2, after " Sikh religion " add:

" or to any other religion or faith except Muslim Christian, Parsi or Jew religion. " The motion was negatived.

Mr. Deputy Speaker: The question is: In part (d) of sub-clause (1) of clause 2, at the end, add:

" subject to his rights and liabilities before his conversion. " The motion was negatived.

Mr. Deputy Speaker: The question is: After part (d) of sub-clause (1) of clause 2, add:

" (e) to a Muslim or Christian converted from Budhism, Jainism, Sikhism or Hinduism in his life time. " The motion was negatived.

Mr. Deputy Speaker: The question is: Omit part (b) of sub-clause (1) of clause 2. The motion was negatived.

Mr. Deputy Speaker: Amendment No. 274, which also stands in the name of Mr. Naziruddin Ahmad is the same as the one just now negatived by the House. That need not be put. Then, the question is: For part (b) of sub-clause (1) of clause 2, substitute:

" (b) to any person who is a Jaina by religion. " The motion was negatived.

Mr. Deputy Speaker : The question is:

In part (b) of sub-clause (1) of clause 2, for " Jaina or Sikh " substitute ; " or Jaina ". The motion was negatived.

Mr. Deputy Speaker: Amendments Nos. 101 and 102 are only earlier amendments which are the same as the amendments which have been just now negatived by the House. I need not put them. The question is:

In part (b) of sub-clause (1) of clause 2, omit " or Sikh".

Mr. Deputy Speaker : The question is: In Clause 2, omit " Sikh ", wherever it occurs. The motion was negatived.

Mr. Deputy Speaker : The question is:

In part (c) (i) of sub-clause (1) after " illegitimate " insert:

" who, if he has attained the age of eighteen years, is himself a Hindu and " The motion was negatived.

Mr. Deputy Speaker : The question is:

In part (c) (ii) of sub-clause (1) of clause 2, after " belongs or belonged" insert "and who, if he has attained the age of eighteen years, is himself

Hindu". The motion was negated.

1-00 P. M.

Mr. Deputy Speaker: Amendment No. 277 is barred by a previous amendment and therefore need not be put.

Shri J. R. Kapoor: My next amendment deserves acceptance. It is an improvement in the language.

Dr. Ambedkar: I will improve my own language.

Pandit Thakur Das Bhargave : It is only a grammatical change. Instead of the present alone it seeks to include the past also.

Mr. Deputy Speaker: The wording in the clause relates to the present. There is a difference. It is not a formal amendment. The question is: In Part (c) (i) of sub-Clause (1) of clause 2, after " parents are "insert " or have been ". The motion was negated.

Mr. Deputy Speaker: Amendment No. 105 is covered by this and need not be put. Then, the question is: After part (c) (ii) of sub-clause (1) of clause 2, add:

" (iii) to any abandoned child brought up as a member of the community, group or family to which such parent belongs; " The motion was negated.

Mr. Deputy Speaker: The question: The question is: After part (c) (ii) of sub-Clause (1) of clause 2, insert:

" (iii) to any orphan or abandoned child brought up by the state. " The motion was negated.

Mr. Deputy Speaker: The question is: After sub-clause (2) of clause 2 insert:

" (2A) This Code also applies to any woman professing any religion who has married a Hindu, Buddhist, Jain or Sikh. " The motion was negated.

Mr. Deputy Speaker: The question is: Omit sub-clause (2) of clause 2. The motion was negated.

Mr. Deputy Speaker: The question is: For sub-clause (2) of clause 2, substitute:

" (2) This Code also applies to any person, irrespective of his religion, who has been governed by the Hindu Law or by any custom or usage as part of that law in respect of any matters dealt with herein. "

The motion was negated.

Mr. Deputy Speaker: The question is: In sub-clause (2) of clause 2, after " Parsi " insert " Sikh ".

The motion was negated.

Mr. Deputy Speaker: The question is: Omit proviso to sub-clause (2) of clause 2. The motion was negated.

Mr. Deputy Speaker : The question is: In the proviso to sub-clause (2) of clause 2, for " in respect of those matters " occurring at the end, substitute:

" In respect of matters, which that person has not voluntarily chosen. "

The motion was negated.

Mr. Deputy Speaker : The question is: After sub-clause (1) of clause 2, insert:

" (1A) This code shall not apply to the Scheduled Castes and Scheduled Tribes. " The motion was negatived.

Mr. Deputy Speaker : Amendment No. 281 is barred. I now come to amendments of a formal and verbal nature. First I shall put amendment No. 3 by Dr. Ambedkar. The question is: In clause 2—

(1) in sub-clause (1),—

(i) in part (a) for " Hindus, that is to say, to all persons professing the Hindu religion " substitute " persons who are Hindus by religion " ;

(ii) in part (d), for " Hindu religion " substitute " Hindu, Buddhist, Jaina or Sikh religion " ;

(2) Omit sub-clause (4). The motion was adopted.

Shri R. K. Chaudhari : Sir, I want to oppose the next amendment of Dr. Ambedkar. I think he is making one of the most colossal mistakes of his life.

Shri J. R. Kapoor: What is the subject matter ?

Mr. Deputy Speaker : Mr. Chaudhari is opposed because Dr. Ambedkar wants to substitute "tribe or community " for " community " Perhaps Dr. Ambedkar's fear is that " community " may not include a tribe; therefore, he wants to make it more specific.

The question is:

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, after part (1) (i) insert:

" (ia) in part (c) (ii) for " community " substitute ' tribe or community ', "

The motion was adopted.

Mr. Deputy Speaker: The question is :

In part (a) of sub-clause (1) of clause 2, for " Hindus, that is to say, all persons professing the Hindu religion " substitute "persons who are Hindus by religion".

The motion was negatived.

Mr. Deputy Speaker: The question is: For part (b) of sub-clause (1) of clause 2, substitute:

" (b) to all persons who are Buddhists, Jains or Sikhs by religion; "

The motion was negatived.

Dr. Deshmukh (Madhya Pradesh) : May I point out that the hon. Doctor had suggested that he wants to hold over the final passing of the clause ?

Mr. Deputy Speaker : The hon. Member was perhaps not present when I later on modified that it is only a formal changes in the name—whether it should be called Hindu Code or Hindu Marriage and Divorce (Amendment) Code. That is only a formal matter.

Then, the question is:

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendments to sub-clause (1) of clause 2, after part (1)

(ii), insert:

" (iii) insert a new part (e) as follows:

' (e) to a convert to any religion or faith after the commencement of this code."

The motion was negatived.

Mr. Deputy Speaker : What about amendment No. 91 moved by Pandit Thakur Das Bhargava ?

Pandit Thakur Das Bhargava: I beg leave to withdraw it. The amendment was by leave, withdrawn.

Mr. Deputy Speaker: The question is;

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert :

" (1A) in the proviso to sub-clause (2), insert at the end 'unless he has declared his consent in the manner prescribed by the Central Government in this behalf to be governed by this Code in respect of such matters also. ' "

The motion was negatived.

Mr. Deputy Speaker : Amendment No. 93 is barred as it is similar to one already negatived.

Then, the question is: Omit sub-clause (3) of clause 2. The motion was negatived.

Mr. Deputy Speaker: Amendment No. 283, being the same, is barred. What about amendment No. 238 moved by Mr. Jaspat Roy Kapoor ? Hon. Members must be attentive.

An Hon. Member: Your amendments are being negatived.

Shri J. R. Kapoor: I am sorry. Sir but there is this talk going on here.

Mr. Deputy Speaker: The Hon. Member himself speaks and quarrels with other Members.

Shri J. R. Kapoor: Sir, I beg leave to withdraw it. The amendment was, by leave, withdrawn.

Mr. Deputy Speaker: What about amendment No. 116 moved by Shri Gokulbhai Bhatt ?

Shri Bhatt: I beg leave to withdraw my amendment. It is not necessary.

The amendment was, by leave, withdrawn.

Mr. Deputy Speaker: Then, the question is: Omit sub-clause (4) of clause 2. The motion was negatived.

Mr. Deputy Speaker: Amendment No. 284, being the same, is barred. The next amendment is No. 118 of Mr. Naziruddin Ahmad that after sub-clause (4) of clause 2, a new sub-clause be added, namely: " (5) Notwithstanding anything in this section this Code shall apply only to such areas or to such persons or classes of persons in any State ... etc. ". This has been held over to clause 1. Amendment Nos. 118 and 285 go together and they are held over. I would suggest to the hon. Member that if he wants to have these taken up in connection with clause 1 he may table a separate amendment.

Shri Naziruddin Ahmad : I shall table a separate amendment to suit the context of clause 1.

Mr. Deputy Speaker: The question is: For part (d) of sub-clause (1) of clause 2, substitute:

" (d) to a convert to the Hindu religion, subject to his rights and liabilities before his conversion. "

The motion was negatived.

Mr. Deputy Speaker: The question is: To clause 2, add the proviso:

" Provided however, that notwithstanding anything contained in the above clauses, this Code shall not apply to such person as will get his or her name registered with such authority and in such manner, as may be hereafter prescribed by Parliament, within five years after this Code comes into force and in case of a minor within five years after such a minor attains majority, to the effect that he or she does not want to be governed by this Code. " The motion was negatived.

Mr. Deputy Speaker: The question is:

To clause 2, add the proviso:

" Provided however, that notwithstanding anything contained in this section this Code shall not apply to any person unless such person got his name registered, signifying his will to be governed by this Code, with such authority and in such manner as may be prescribed. "

The motion was negatived.

Mr. Deputy Speaker: The question is;

To clause 2, add the proviso:

" Provided further that notwithstanding anything to the contrary in this Act, no provision of this Act shall apply to any one unless a referendum thereupon has been taken in the State to which he belongs and the Legislature of the State thereafter has decided in accordance with the result of the referendum that the provisions of this Act shall apply to the residents of the State. Further, that, thereafter, it shall be open to anyone to declare that he shall not be governed by this Act and the same shall then not apply to him. "

The motion was negatived.

Mr. Deputy Speaker: The question is;

In part (a) of sub-clause (1) of clause 2, after " including ' insert " Buddhists, Jains, Sikhs ". The motion was negatived.

Pandit Malaviya: I do not press my next amendment.

Mr. Deputy Speaker : Now, we have disposed of all the amendments. Is there any Hon. Member whose amendment I have not put to the House ? I take it that there is none. The question is:

That clause 2, as amended, stand part of the Bill. " The motion was adopted.

Clause 2, as amended, was added to the Bill.

Continued...